

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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ARENDI USA, INC., ET AL. * C.A. 02-343T

VS. * 10:00 A.M.

* SEPTEMBER 22, 2004

MICROSOFT CORPORATION, ET AL. *

* PROVIDENCE, RI

* * * * *

BEFORE THE HONORABLE ERNEST C. TORRES

CHIEF DISTRICT JUDGE

(JURY TRIAL)

APPEARANCES:

FOR ARENDI U.S.A. INC:

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY & POPEO, PC
BY: PAUL J. HAYES, ESQUIRE
BY: EUGENE A. FEHER, ESQUIRE
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BOSTON, MA 02111

TAYLOR, DUANE, BARTON & GILMAN,
LLP
BY: SHERI L. PIZZI, ESQUIRE
10 DORRANCE STREET - SUITE 700
PROVIDENCE, RI 02903

1 FOR MICROSOFT CORPORATION:

2 FISH & RICHARDSON, P.C.
3 BY: FRANK E. SCHERKENBACH, ESQ.
4 BY: CRAIG R. SMITH, ESQUIRE
225 FRANKLIN STREET
BOSTON, MA 02110-2804

5 FISH & RICHARDSON, P.C.
6 BY: JENNIFER K. BUSH, ESQUIRE
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10 PROVIDENCE, RI 02903

11 ISABELLA FU, ESQUIRE
12 MICROSOFT IN-HOUSE COUNSEL

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23 COURT REPORTER: ANGELA M. GALLOGLY, RPR
24 ONE EXCHANGE TERRACE
25 PROVIDENCE, RI 02903

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5 DR. BRUCE CROFT

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1 SEPTEMBER 22, 2004 - 10:15 A.M.

2 THE COURT: GOOD MORNING. I UNDERSTAND YOU ARE
3 HAVING TECHNICAL PROBLEMS, MR. SCHERKENBACH?

4 MR. SCHERKENBACH: WE HAVE, YOUR HONOR. THE
5 WITNESS'S COMPUTER WORKS FINE, HE CAN SEE IT ON HIS
6 SCREEN; WE CAN'T SEEM TO GET THE INTERFACE TO THE
7 COURT'S COMPUTER SCREENS WORKING. IT WORKED AND THEN
8 IT DIDN'T WORK. WHAT I WOULD LIKE TO DO WITH YOUR
9 PERMISSION, SINCE IT'S CENTRAL TO HIS TESTIMONY TO BE
10 ABLE TO DEMONSTRATE THIS PRODUCT, WOULD BE TO LET MR.
11 MILLER STEP DOWN, OBVIOUSLY WITHOUT ANY CONFERRING WITH
12 ANYBODY. WE'LL GO TO OUR NEXT WITNESS, DR. CROFT. HE
13 CAN TALK ABOUT THE INFRINGEMENT PART OF HIS ANALYSIS,
14 WE'LL FIX THE PROBLEM OVER LUNCH OR WHATEVER IT TAKES,
15 AND THEN BRING MR. MILLER BACK AND FINISH HIS
16 TESTIMONY.

17 THE COURT: ALL RIGHT. DO YOU HAVE ANY
18 OBJECTION TO THAT?

19 MR. HAYES: I DO HAVE AN OBJECTION. HE STARTED
20 HIS TESTIMONY, HE OUGHT TO FINISH IT IN THE SEQUENCE OF
21 EVENTS.

22 THE COURT: WHAT WOULD YOU SUGGEST?

23 MR. HAYES: I WOULD SUGGEST THAT HE GET UP, HE
24 CAN DESCRIBE WHATEVER HE WANTS TO DESCRIBE. IF HE HAS
25 A COMPUTER, HE CAN SHOW IT TO THE JURY.

1 THE COURT: I THINK WE'LL INTERRUPT HIS
2 TESTIMONY AND START WITH DR. CROFT AND WE'LL GET BACK
3 TO MR. MILLER.

4 MR. HAYES: SO I'M CLEAR, YOU ARE GOING TO DO
5 INFRINGEMENT WITH CROFT?

6 MR. SCHERKENBACH: YES, WE'LL TRY TO DO THE
7 INFRINGEMENT MODULE AND THEN THAT WILL PROBABLY TAKE US
8 TO THE MORNING BREAK, AND HOPEFULLY WE CAN HAVE THIS
9 PROBLEM FIXED AND PUT MR. MILLER BACK ON.

10 THE COURT: HOW LONG DO YOU THINK IT WILL TAKE
11 TO FIX THIS PROBLEM?

12 MR. SCHERKENBACH: UNFORTUNATELY, WE DON'T KNOW.
13 IT'S PROBABLY A VERY SHORT FIX ONCE WE FIGURE OUT WHAT
14 IT WAS. IT WAS WORKING FINE THIS MORNING AND THEN SORT
15 OF DIDN'T AND WE HAVEN'T FIGURED OUT WHY.

16 MR. HAYES: THE PROBLEM I HAVE IS AM I SUPPOSED
17 TO THEN CROSS-EXAMINE CROFT ON INFRINGEMENT BEFORE HE
18 GETS BACK UP OR --

19 THE COURT: NO, YOU'LL WAIT UNTIL CROFT IS
20 FINISHED, BUT WE DO HAVE A SET A TIME LIMIT ON THIS,
21 MR. SCHERKENBACH. IF YOU CAN'T CORRECT THE PROBLEM
22 DURING THE LUNCHEON RECESS, I THINK YOU ARE GOING TO
23 HAVE TO PRESENT MR. MILLER'S TESTIMONY WITHOUT HIS
24 COMPUTER.

25 MR. SCHERKENBACH: THAT'S FAIR, WE'LL DO THAT,

1 YOUR HONOR.

2 THE COURT: BRING THE JURY IN, PLEASE.

3 (JURY PRESENT)

4 THE COURT: PLEASE BE SEATED, LADIES AND
5 GENTLEMEN, AND GOOD MORNING.

6 THE REASON WE'RE A FEW MINUTES LATE GETTING
7 STARTED IS THAT THERE HAS BEEN TECHNICAL DIFFICULTIES
8 WITH MR. MILLER'S COMPUTER OR CONNECTING IT TO THE
9 SYSTEM, I'M NOT SURE WHICH. SO, BECAUSE WE WERE UNABLE
10 TO CORRECT THOSE DIFFICULTIES, WE'RE GOING TO INTERRUPT
11 HIS TESTIMONY AND MR. SCHERKENBACH WILL CALL HIS NEXT
12 WITNESS AND WE'LL ATTEMPT TO FIX THE PROBLEM DURING THE
13 LUNCHEON RECESS. IF HE DOES, WE'LL GET BACK TO
14 MR. MILLER OR WE'LL GET BACK TO HIM ANYWAY EITHER WITH
15 OR WITHOUT COMPUTER. IF HE CORRECTS THE PROBLEM,
16 MR. MILLER WILL HAVE THE COMPUTER. IF HE DOESN'T, HE
17 WILL HAVE TO TESTIFY WITHOUT THE COMPUTER.

18 MR. SCHERKENBACH?

19 MR. SCHERKENBACH: THANK YOU, YOUR HONOR.

20 MICROSOFT CALLS DR. BRUCE CROFT.

21 DEFENDANT'S WITNESS, DR. BRUCE CROFT SWORN

22 THE CLERK: STATE AND SPELL YOUR NAME.

23 THE WITNESS: BRUCE CROFT, B-R-U-C-E, C-R-O-F-T.

24 DIRECT EXAMINATION

25 BY MR. SCHERKENBACH:

1 Q. GOOD MORNING, DR. CROFT.

2 A. GOOD MORNING.

3 Q. WOULD YOU INTRODUCE YOURSELF TO THE JURY, PLEASE.

4 A. YES. MY NAME IS BRUCE CROFT, I'M A FULL-TIME
5 PROFESSOR AT THE UNIVERSITY OF MASSACHUSETTS AT AMHERST
6 IN COMPUTER SCIENCE; I'M ALSO THE CHAIR OF THE
7 DEPARTMENT THERE.

8 Q. HAVE YOU EVER TESTIFIED AT TRIAL BEFORE?

9 A. NO, I HAVEN'T.

10 Q. COULD YOU PLEASE DESCRIBE YOUR EDUCATIONAL
11 BACKGROUND FOR THE JURY.

12 A. YES. I GOT MY BACHELOR'S AND MASTER'S DEGREES IN
13 AUSTRALIA AT MONASH UNIVERSITY IN MELBOURNE, AUSTRALIA
14 IN 1974 AND 1975 RESPECTIVELY, AND THEN I DID MY PH.D.
15 AT THE UNIVERSITY OF CAMBRIDGE AT ENGLAND. 1979 IS
16 WHEN I GRADUATED FROM THAT.

17 Q. AND WHAT DID YOU DO AFTER RECEIVING YOUR PH.D. IN
18 COMPUTER SCIENCE?

19 A. I JOINED THE UNIVERSITY OF MASSACHUSETTS AT AMHERST
20 AS AN ASSISTANT PROFESSOR.

21 Q. AND WHAT IS YOUR CURRENT POSITION AT U-MASS?

22 A. WELL, MY OFFICIAL TITLE IS DISTINGUISHED PROFESSOR
23 OF COMPUTER SCIENCE AT U-MASS AMHERST, AND I'M CHAIR OF
24 THE DEPARTMENT THERE. I'M ALSO DIRECTOR OF SOMETHING
25 CALLED THE CENTER FOR INTELLIGENT INFORMATION

1 RETRIEVAL.

2 Q. WHAT DO YOU MEAN BY "INFORMATION RETRIEVAL"?

3 A. THAT'S THE FIELD OF COMPUTER SCIENCE THAT I WORK
4 IN, MY RESEARCH AREA. AND IT'S A FIELD THAT INVOLVES
5 THE ANALYSIS AND RETRIEVAL OF INFORMATION AND PRIMARILY
6 TEXT DOCUMENTS. AND THE MOST OBVIOUS EXAMPLE EVERYBODY
7 USES THESE DAYS OF THE RESULTS OF THIS TYPE OF RESEARCH
8 ARE INTERNET SEARCH ENGINES LIKE GOOGLE. THE
9 ALGORITHMS THAT RUN THAT SEARCH ENGINE COME FROM THE
10 FIELD OF INFORMATION RETRIEVAL.

11 Q. HOW LONG HAVE YOU BEEN THE CHAIR AT THE DEPARTMENT
12 OF COMPUTER SCIENCE AT UNIVERSITY OF MASSACHUSETTS?

13 A. THREE YEARS NOW.

14 Q. HOW LONG HAVE YOU BEEN TEACHING COMPUTER SCIENCE?

15 A. FOR TWENTY-FIVE YEARS AT U-MASS.

16 Q. AND WHAT KIND OF COURSES HAVE YOU TAUGHT?

17 A. PRETTY WIDE RANGE, GRADUATE AND UNDERGRADUATE
18 COURSES FOCUSED PRIMARILY IN THE AREA OF DATABASES AND
19 INFORMATION RETRIEVAL. I'VE ALSO TAUGHT UNDERGRADUATE
20 PROGRAMMING COURSES AND THINGS LIKE THAT, AND, OF
21 COURSE I DO A LOT OF GRADUATE STUDENT SUPERVISION FOR
22 THE RESEARCH. I'VE GRADUATED SEVENTEEN PH.D. STUDENTS
23 AND SUPERVISED NINE POST-DOCTORAL STUDENTS AS WELL.

24 Q. HAVE YOU WON ANY HONORS OR AWARDS FOR YOUR ACADEMIC
25 OR PROFESSIONAL WORK?

1 A. YES, I HAVE. THE UNIVERSITY MADE ME A
2 DISTINGUISHED PROFESSOR, WHICH IS AN HONOR THAT ONLY A
3 FEW PEOPLE -- ONLY A FEW PROFESSORS GET. AND THEY ALSO
4 GAVE ME A, SEPARATELY FROM THAT, A RESEARCH AWARD A
5 COUPLE OF YEARS AGO. ON THE NATIONAL SCENE, I'VE BEEN
6 A DISTINGUISHED LECTURER AT VARIOUS PLACES OVER SIX
7 TIMES. AND IN 1996 I WAS MADE AN ACM FELLOW. ACM IS
8 ASSOCIATION FOR COMPUTING MACHINERY, WHICH IS THE MAIN
9 PROFESSIONAL ORGANIZATION FOR COMPUTER SCIENTISTS; AND
10 FELLOW IS THE HIGHEST GRADE OF THAT ORGANIZATION. AND
11 YOU HAVE TO GET ELECTED TO THAT BY OTHER PEOPLE AND
12 IT'S ONLY, ONCE AGAIN, ONLY A FEW PEOPLE A YEAR GET
13 INTO THAT. THAT HAPPENED IN 1996.

14 IN 2000, I WON THE AMERICAN SOCIETY FOR
15 INFORMATION SCIENCE RESEARCH AWARD, WHICH IS LIKE A
16 MAJOR CONTRIBUTION OVER A LONG PERIOD TYPE OF AWARD.

17 AND, WELL, IN 2003, I WON WHAT'S THE MAJOR AWARD
18 IN THE FIELD OF INFORMATION RETRIEVAL, THE ACM SALTEN
19 AWARD, WHICH IS FOR LIFETIME ACHIEVEMENT IN THAT FIELD.

20 Q. HAVE YOU PUBLISHED ANY ARTICLES IN THE FIELD OF
21 INFORMATION RETRIEVAL?

22 A. I'VE HAD A LOT OF STUDENTS, SO I HAVE PUBLISHED A
23 LOT OF ARTICLES; OVER ONE HUNDRED REFEREED CONFERENCE
24 PUBLICATIONS. JUST LET ME EXPLAIN THAT. REFEREE MEANS
25 A PEER GROUP, A GROUP OF OTHER PEOPLE GOING TO THE

1 CONFERENCE REVIEW THESE PAPERS, ONLY ACCEPT A SMALL
2 NUMBER OF THEM. THE CONFERENCE PUBLICATIONS ARE REALLY
3 THE MAIN VENUE FOR SHARING RESEARCH BETWEEN COMPUTER
4 SCIENTISTS. AND I'VE ALSO PUBLISHED AROUND SIXTY
5 JOURNAL AND BOOK CHAPTERS, SORT OF PUBLICATIONS.

6 Q. HAVE YOU ATTENDED CONFERENCES IN THE FIELD OF
7 INFORMATION RETRIEVAL?

8 A. MANY CONFERENCES OVER A PERIOD OF TWENTY YEARS NOW.

9 Q. AND HAVE YOU PRESENTED ANY PAPERS AT THESE
10 CONFERENCES?

11 A. OFTEN. CERTAINLY MORE THAN FIFTY TIMES AND AROUND
12 ABOUT THIRTY-FIVE TIMES AS A KEYNOTE OR AN INVITED
13 TALK.

14 Q. SO OTHER THAN YOUR APPOINTMENTS AS A COMPUTER
15 SCIENCE PROFESSOR AT THE UNIVERSITY OF THE
16 MASSACHUSETTS, DO YOU HOLD ANY OTHER POSITIONS RELATED
17 TO COMPUTER SCIENCE?

18 A. OH, I MENTIONED THE DIRECTOR OF THE CENTER FOR
19 INTELLIGENT INFORMATION RETRIEVAL?

20 Q. YES. SO WHAT IS THE CENTER FOR INTELLIGENT
21 INFORMATION RETRIEVAL?

22 A. WELL, THIS IS A CENTER I FOUNDED IN 1992 AT
23 U-MASS., INITIALLY, A NATIONAL SCIENCE FOUNDATION
24 CENTER, AND IT'S -- THE FUNCTION OF THE CENTER IS TO DO
25 BASIC RESEARCH AND TECHNOLOGY TRANSFER, TO DO BOTH

1 THINGS IN THE AREA OF INFORMATION RETRIEVAL. AND IT'S
2 GROWN TO BE CERTAINLY ONE OF THE LARGEST ORGANIZATIONS
3 OF THIS TYPE IN THE ACADEMIC AREA IN THE WORLD.

4 AND IT'S PUBLISHED -- WE'VE PUBLISHED HUNDREDS
5 OF PAPERS IN THE AREA OF INFORMATION RETRIEVAL AND WE
6 CURRENTLY EMPLOY MORE THAN 40 PEOPLE, AND IT'S BEEN, AT
7 LEAST AT THAT LEVEL, OVER THE LAST 12 YEARS OR SO.

8 Q. IS THE RESEARCH THAT'S DONE AT THE CENTER FOR
9 INTELLIGENT INFORMATION RETRIEVAL USED IN THE REAL
10 WORLD?

11 A. YES, IT HAS BEEN USED A LOT IN THE REAL WORLD. AS
12 I SAID, PART OF THE MISSION OF THE CENTER IS TO DO
13 TECHNOLOGY TRANSFER. AND WE HAVE HAD MORE THAN 80
14 GOVERNMENT AND INDUSTRIAL PARTNERS THAT WORK WITH US IN
15 THE CENTER TO MAKE USE OF THE TECHNOLOGY THAT WE'RE
16 DEVELOPING.

17 Q. AND WHAT ARE YOUR RESPONSIBILITIES AS THE DIRECTOR
18 OF THE CENTER?

19 A. WELL, I PERSONALLY SUPERVISE A LOT OF THE RESEARCH
20 PROJECTS WITH THE GRADUATE STUDENTS THERE, SO DIRECTLY
21 INVOLVED IN THE RESEARCH IN A LOT OF THE PROJECTS. AND
22 I'VE ALSO MANAGED A LOT OF THE TECHNOLOGY TRANSFER
23 PROJECTS.

24 Q. CAN YOU GIVE US SOME EXAMPLES OF RESEARCH DONE AT
25 THE CENTER THAT HAVE MADE THEIR WAY INTO THE REAL

1 WORLD?

2 A. SURE. I'LL PICK A FEW. THE DEPARTMENT -- OVER THE
3 YEARS WE'VE HAD A LOT OF FUNDING FROM THE DEPARTMENT OF
4 DEFENSE AND THE INTELLIGENCE AGENCIES; INFORMATION
5 RETRIEVAL IS OF OBVIOUS INTEREST TO THOSE
6 ORGANIZATIONS. AND WE HAVE MADE USE OF A NUMBER OF
7 PIECES OF SOFTWARE THAT WE HAVE DEVELOPED OVER THE
8 YEARS. ANOTHER ONE IS THE LIBRARY OF CONGRESS. THEY
9 HAVE QUITE A BIG WEBSITE NOW, THE LIBRARY OF CONGRESS,
10 AND TWO OF THE MAJOR FEATURES OF THAT WEBSITE ARE
11 CALLED THE THOMAS LEGISLATIVE ACCESS SYSTEM WHERE YOU
12 USE THIS TO ACCESS ALL THE INFORMATION ABOUT THE BILLS
13 AND LAWS THAT ARE BEING PASSED, AND THAT'S BEEN GOING
14 SINCE ABOUT 1995. AND ALSO WHAT THEY CALL THE AMERICAN
15 MEMORY, WHICH IS A DIGITAL LIBRARY SYSTEM WHERE THEY
16 HAVE A LOT OF PHOTOGRAPHS AND ARCHIVES OF INTERESTING
17 MATERIAL THAT THE LIBRARY OF CONGRESS HAS. THEY HAVE
18 USED OUR TECHNOLOGY, OUR SEARCH ENGINES FOR ACCESSING
19 THAT INFORMATION ON THE WEB FOR MANY YEARS NOW.

20 ANOTHER EXAMPLE, THE NATIONAL HOLOCAUST MUSEUM
21 IN WASHINGTON USES THAT TECHNOLOGY TO ACCESS SURVIVOR
22 RECORDS AND THINGS LIKE THAT.

23 Q. DOES THE WHITE HOUSE USE YOUR TECHNOLOGY?

24 A. WELL, NOT THIS ONE. THE PREVIOUS WHITE HOUSE, THE
25 PREVIOUS ADMINISTRATION USED THAT TECHNOLOGY ON THEIR

1 WEBSITE. AND WE ALSO BUILT A SYSTEM CALLED GOVBUG,
2 WHICH IS THE FIRST SYSTEM TO PROVIDE ACCESS TO ALL THE
3 GOVERNMENT WEBSITES IN ONE SEARCH ENGINE. AND OF
4 COURSE, YOU KNOW, I'VE LISTED A LOT OF GOVERNMENT
5 THINGS, WE ACTUALLY EVEN HAD A RESEARCH PROJECT WITH
6 THE PATENT & TRADEMARK ORGANIZATION. THEY FUNDED A
7 CONTRACT TO GET US TO LOOK AT IMPROVING THEIR SEARCH
8 TECHNOLOGY. AND LOTS OF GOVERNMENT STUFF.

9 WE ALSO HAVE, OBVIOUSLY, A LOT INDUSTRIAL
10 PARTNERS, FOR EXAMPLE, INFOSEEK WAS A SEARCH ENGINE
11 THAT SOME OF YOU WITH LONG MEMORIES MIGHT REMEMBER. IT
12 WAS A POPULAR SEARCH ENGINE IN THE EARLY 2000'S, AND
13 THEY USED OUR TECHNOLOGY FOR THE FIRST COUPLE OF YEARS
14 OF THEIR OPERATION.

15 Q. HAVE YOU PERSONALLY WORKED FOR ANY SOFTWARE
16 COMPANIES?

17 A. WELL, I'VE DONE A LOT OF CONSULTING FOR SOFTWARE
18 COMPANIES OVER THE YEARS. AND BY CONSULTING -- WELL,
19 LET ME JUST GIVE YOU AN EXAMPLE. THE CURRENT
20 CONSULTING THING I'M DOING IS WORKING WITH A MEDICAL
21 INFORMATION COMPANY IN MASSACHUSETTS WHO PROVIDES
22 INFORMATION TO DOCTORS ON THEIR DESKTOPS AND WITH --
23 I'VE DESIGNED A NEW RETRIEVAL SYSTEM FOR THEM, WHICH IS
24 MUCH SUPERIOR TO THEIR OLD ONE. AND THEY ARE TESTING
25 THAT IN THE PRODUCT PHASE NOW TO DO A BETTER JOB OF

1 PROVIDING INFORMATION. SO THAT'S AN EXAMPLE OF WHAT I
2 DO IN CONSULTING.

3 AND I ALSO FOUNDED A, CO-FOUNDED A STARTUP
4 COMPANY CALLED SOVEREIGN HILLS SOFTWARE, AND THAT WAS
5 ABOUT 1996. AND THAT WAS IN THE AREA OF TECHNOLOGY FOR
6 WEB-BASED INFORMATION SYSTEMS, INFORMATION RETRIEVAL
7 TECHNOLOGY. IT WAS LIKE MANY OF THE OTHER COMPANIES IN
8 THAT ERA, IT WAS MODERATELY SUCCESSFUL FOR A WHILE, WE
9 BUILT UP, HAD A LOT OF EMPLOYEES, IT THEN GOT SOLD TO
10 ANOTHER COMPANY AS THE FINANCIAL ISSUES IN THE LATE
11 '90S, AND SADLY, IT NO LONGER EXISTS.

12 Q. DR. CROFT, I'M GOING TO SHOW YOU EXHIBIT R-26. IT
13 SHOULD COME UP ON YOUR SCREEN THERE. DO YOU RECOGNIZE
14 THIS, AT LEAST THE FIRST PAGE OF EXHIBIT R-26?

15 A. YES, I RECOGNIZE THAT COVER PAGE.

16 Q. WHAT IS IT?

17 A. IT'S MY CURRICULUM VITAE, MY RESUME.

18 Q. AND DOES THIS RESUME ACCURATELY REFLECT YOUR
19 EDUCATION, PUBLICATIONS AND WORK EXPERIENCE?

20 A. YES, AS OF A FEW MONTHS AGO.

21 MR. SCHERKENBACH: YOUR HONOR, WE MOVE THE
22 ADMISSION OF EXHIBIT R-26.

23 MR. HAYES: NO OBJECTION.

24 THE COURT: R-26 MAY BE ADMITTED AS A FULL
25 EXHIBIT.

1 (DEFENDANT'S EXHIBIT R-26 ADMITTED IN FULL)

2 MR. SCHERKENBACH: AND AT THIS TIME, ALSO, YOUR
3 HONOR, WE TENDER DR. CROFT AS AN EXPERT IN THE FIELD OF
4 COMPUTER SCIENCE GENERALLY, AND PARTICULARLY IN THE
5 FIELD OF INFORMATION RETRIEVAL.

6 MR. HAYES: NO OBJECTION.

7 THE COURT: ALL RIGHT, DR. CROFT MAY TESTIFY AS
8 AN EXPERT IN THE FIELD.

9 Q. DR. CROFT, HAVE YOU BEEN RETAINED AS AN EXPERT IN
10 THIS CASE?

11 A. YES, I HAVE BEEN RETAINED BY MICROSOFT.

12 Q. WHAT WERE YOU ASKED TO DO?

13 A. I WAS ASKED TO LOOK AT THE ARENDI PATENT AND THINK
14 ABOUT IT FROM THE POINT OF VIEW OF VALIDITY, AND THEN
15 TO ALSO CONSIDER WHETHER THE SMART TAGS WAS THE SAME AS
16 THE ARENDI PATENT.

17 Q. AND WHAT SORT OF INFORMATION DID YOU REVIEW IN
18 PERFORMING THOSE TASKS?

19 A. A LOT OF THINGS. OBVIOUSLY, THE ARENDI PATENT, THE
20 FILE HISTORY OF THE PATENT, A LOT OF PRIOR ART AND
21 DEPOSITIONS IN THE CASE. OBVIOUSLY, A LOT OF THINGS TO
22 DO WITH SMART TAGS, DOCUMENTS, DOCUMENTATION, THE
23 ACTUAL SYSTEM, THE CODE OF THE SYSTEM, AND I THINK
24 THAT'S JUST ABOUT IT. DEPOSITION TESTIMONY OF VARIOUS
25 KINDS.

1 Q. DID YOU ALSO REVIEW AND CONSIDER THE OPINIONS OF
2 MR. KLAUSNER?

3 A. YES, I DID.

4 Q. HAVING REVIEWED ALL OF THIS MATERIAL, WHAT WERE YOU
5 ASKED SPECIFICALLY TO DO?

6 A. WELL, I WAS ASKED TO GIVE MY OPINION OBVIOUSLY ON
7 WHETHER THE -- WHETHER SMART TAGS INFRINGES THE ARENDI
8 PATENT AND ALSO WHETHER THE ARENDI PATENT WAS VALID.

9 Q. AND DO YOU HAVE AN OPINION ON THOSE ISSUES YOU WERE
10 ASKED TO ADDRESS?

11 A. YES, I DO.

12 Q. AND WHAT IS YOUR OPINION?

13 A. MY OPINION IS THAT THE MICROSOFT SMART TAGS DO NOT
14 INFRINGE THE ARENDI PATENT. AND I ALSO THINK THAT THE
15 ARENDI PATENT IS INVALID.

16 Q. LET'S TALK FIRST ABOUT YOUR NONINFRINGEMENT
17 OPINION. WHAT'S THE BASIS, GENERALLY, FOR YOUR OPINION
18 THAT SMART TAGS DO NOT INFRINGE THE ARENDI PATENT?

19 A. WELL, IT ALL BOILS DOWN TO, I THINK IN MY OPINION,
20 THERE'S TWO MAJOR DIFFERENCES. THE FIRST ONE IS THAT
21 ALL THE ANALYSIS OR RECOGNITION THAT SMART TAGS DOES
22 HAPPENS BEFORE THE USER SELECTS ANY ACTION. AND IN
23 TERMS OF THE PATENT IT MEANS THAT ANYTHING THAT COULD
24 BE FIRST INFORMATION IS ALREADY RECOGNIZED OR ANALYZED
25 BEFORE ANY ACTION IS SELECTED. SO THAT'S ONE MAJOR

1 DIFFERENCE TO THE PATENT.

2 THE OTHER MAJOR DIFFERENCE TO THE PATENT IS THAT
3 THERE ARE MULTIPLE COMMANDS REQUIRED IN SMART TAGS TO
4 SELECT A SMART TAG ACTION. AND THOSE MULTIPLE COMMANDS
5 INCLUDE A USER SELECTION, A TEXT SELECTION OF THE SMART
6 TAG. AND YOU JUST CANNOT IGNORE THOSE MULTIPLE
7 COMMANDS IN SMART TAGS. YOU'VE SEEN A COUPLE OF TIMES
8 IN DOCUMENTS, DISCUSSION ABOUT ACTION-IN-CONTEXT AND
9 THAT'S THE WHOLE POINT OF SMART TAGS IS THAT THE
10 ACTIONS THAT YOU SEE DEPEND ON THE CONTEXT OR THE SMART
11 TAG THAT YOU PICK. AND UNTIL YOU PICK A SMART TAG,
12 THERE ARE NO ACTIONS TO PICK. AND THE ACTIONS YOU GET
13 DEPEND ON THE SMART TAG YOU PICK. SO YOU CAN'T IGNORE
14 THAT INITIAL STEP OF SELECTING THE SMART TAG.

15 AND THERE'S ALSO ANOTHER STEP OF SELECTING A
16 MENU, BUT, I -- CERTAINLY THERE'S MORE THAN THE SINGLE
17 COMMAND THAT THE PATENT TALKS ABOUT.

18 Q. ALL RIGHT. AND ARE THOSE TWO, WHAT YOU HAVE
19 DESCRIBED AS MAJOR DIFFERENCES, REFLECTED IN THE
20 LANGUAGE OF CLAIM 1 OF THE PATENT?

21 A. YES, THEY ARE. CLAIM 1 REQUIRES THE ANALYSIS TO
22 DETERMINE WHAT THE USER HAS TYPED TO OCCUR AFTER THE
23 SELECTION OF A SMART TAG -- SORRY -- AFTER THE SINGLE
24 EXECUTE COMMAND.

25 Q. LET ME -- MAY I HAVE THE ELMO, PLEASE. I'M GOING

1 TO JUST PUT UP A COPY OF CLAIM 1 HERE.

2 I TAKE IT, DR. CROFT, THAT YOU RECOGNIZE CLAIM
3 1?

4 A. YES, I DO.

5 Q. AND CAN YOU IDENTIFY FOR US, AND I WILL HIGHLIGHT
6 WHERE IN THE CLAIM THE TWO MAJOR DIFFERENCES YOU
7 IDENTIFIED ARE LOCATED.

8 A. WELL, I MENTIONED THE ANALYZING ONE FIRST, AND SO
9 THE CLAIM LIMITATION, IT SAYS, "ANALYZING THE DOCUMENT
10 TO DETERMINE IF THE FIRST INFORMATION IS CONTAINED
11 THEREIN," IS ONE LIMITATION THAT SMART TAGS IS MISSING.
12 THE OTHER ONE IS IMMEDIATELY ABOVE THAT WHICH SAYS,
13 "UPON A SINGLE ENTRY OF THE EXECUTE COMMAND BY MEANS OF
14 THE INPUT DEVICE."

15 Q. NOW, CAN A PERSON USING SMART TAGS ACTUALLY SEE THE
16 REASONS WHY SMART TAGS DO NOT INFRINGE, IN YOUR
17 OPINION?

18 A. IN MY OPINION THEY CAN, YES, EASILY.

19 Q. CAN YOU SHOW US THAT, PLEASE, BY USING AN EXAMPLE
20 OF A SMART TAG?

21 A. YES, ASSUMING THIS IS HOOKED UP.

22 MR. SCHERKENBACH: OKAY.

23 YOUR HONOR, MAY I ASSIST IN BRINGING THAT
24 COMPUTER UP?

25 THE COURT: YES.

1 THE WITNESS: DO I NEED TO ROTATE THROUGH THIS
2 AGAIN, IT WAS ON THERE FOR A SECOND? I'LL GO THROUGH
3 THE F7.

4 THE COURT: WOULD YOU LIKE TO STEP DOWN, DOCTOR,
5 AND CONFER WITH YOUR TECHNICAL EXPERT OVER HERE?

6 MR. SCHERKENBACH: DR. CROFT, THERE IS A POWER
7 BUTTON ON THE UNIT THAT THE COMPUTER IS MOUNTED TO, YOU
8 MAY HAVE TO HIT THAT BUTTON ON THE BACK. TRY THAT.

9 THE WITNESS: ALL RIGHT.

10 MR. SCHERKENBACH: IT'S COMING UP; IT WILL BE UP
11 IN A SECOND. THERE'S A MOUSE THERE ON YOUR RIGHT, TOO,
12 IF THAT HELPS YOU, DR. CROFT.

13 THE WITNESS: OKAY.

14 Q. NOW, CAN YOU JUST BRING UP A BLANK WORD DOCUMENT
15 FOR THE PURPOSES OF THIS DEMONSTRATION.

16 A. YES, I WILL.

17 MR. SCHERKENBACH: AND, YOUR HONOR, MAY THE JURY
18 SEE THE DEMONSTRATION AS IT IS HAPPENING. THANK YOU.

19 A. SO, I'M GOING TO TYPE IN MY NAME, SHOWING THAT THE
20 PERSON NAME-TAGGER IS BEING TURNED ON, WHICH IT HAS,
21 YOU CAN SEE IT'S UNDERLINED, YOU HAVE SEEN THIS MANY
22 TIMES, IT IS RECOGNIZED. I'M ALSO GOING TO TYPE IN THE
23 DATE HERE, 22ND, SOMETHING LIKE THAT. YOU CAN SEE THAT
24 THIS HAS ALSO BEEN RECOGNIZED AND UNDERLINED.

25 SO THE TWO POINTS I WAS MENTIONING ARE THE

1 ANALYSIS OR RECOGNITION OF WHAT THE USER HAS TYPED
2 HAPPENING BEFORE ANY SMART TAGS ACTION HAS OCCURRED.
3 CLEARLY, THOSE TWO STRINGS HAVE BEEN RECOGNIZED,
4 ANALYZED, IDENTIFIED, AND TAGGED, WE'VE SEEN THE
5 TAGGING INFORMATION AS WELL AS A PERSON NAME AND A
6 DATE. AND AS WE LOOK AT ALL THE EXAMPLES, ANYTHING
7 THAT COULD BE FIRST INFORMATION IS ALREADY RECOGNIZED
8 AT THIS STAGE AND ANALYZED AT THE STAGE.

9 THE OTHER POINT I MADE WAS ABOUT THE MULTIPLE
10 COMMANDS REQUIRED TO DO A SMART TAGS' ACTION. AND I
11 PUT ON TWO THERE JUST -- JUST TO HIGHLIGHT THIS POINT,
12 OKAY, IF I PUT MY MOUSE POINTER OVER THE DATE, THEN I
13 GET THAT LITTLE ICON OR BUTTON. IF I PUT IT OVER THE
14 NAME, I GET ANOTHER LITTLE ICON OR BUTTON. AND AS
15 YOU'VE SEEN, THE ACTIONS OF THAT DEPEND ON WHICH OF
16 THOSE SMART TAGS I CHOOSE. SO IF I CHOOSE THIS ONE,
17 OBVIOUSLY I COULD DO THIS USING THE KEYBOARD, THEN I
18 GET ACTIONS CORRESPONDING TO PERSON NAMES.

19 IF I CHOOSE THIS ONE, THE DATE, THEN I GET
20 DIFFERENT ACTIONS CORRESPONDING TO THE DATE. AND THIS
21 IS WHAT I MEAN IS YOU CANNOT SEPARATE OUT THE SELECTION
22 OF A SMART TAG, AND TO SOME EXTENT ALSO THE COMMAND TO
23 -- ON THE BUTTON TO BRING DOWN THE MENU. BUT CERTAINLY
24 THE SELECTION OF THE SMART TAG IS A CRITICAL PART OF
25 SELECTING A SMART TAGS' ACTION, THE PART OF THE PROCESS

1 THAT'S REQUIRED TO SELECT A SMART TAGS' ACTION.

2 YOU CAN'T SAY, WELL, LET'S JUST NOT WORRY ABOUT
3 SELECTING A SMART TAG. SO THAT'S WHAT I MEANT ABOUT
4 BEING OBVIOUS IF YOU LOOK AT THE OPERATION OF SMART
5 TAGS.

6 Q. NOW, LET'S GO BACK AND LOOK AT CLAIM 1. MAY WE
7 HAVE THE ELMO, PLEASE.

8 AND YOU IDENTIFIED FOR US THE TWO LIMITATIONS
9 THAT YOU ARE GOING TO FOCUS ON YOUR ANALYSIS. BUT BACK
10 UP A MINUTE AND TELL US YOUR OVERALL UNDERSTANDING OF
11 WHAT CLAIM 1 REQUIRES.

12 A. YES, I WILL. OBVIOUSLY THERE'S A PREAMBLE, WHICH
13 BASICALLY SAYS WE'RE DEALING WITH A DOCUMENT CREATED
14 USING SOME SORT OF APPLICATION PROGRAM. BUT THEN WE
15 GET TO THE IMPORTANT CLAIM LIMITATIONS; THE FIRST TWO
16 ARE ESSENTIALLY SETTING THE ENVIRONMENT FOR THE
17 ACTIONS, THE REAL -- THE STUFF THAT'S GOING TO HAPPEN.
18 WE ARE GOING TO PROVIDE A RECORD RETRIEVAL PROGRAM AND
19 GOING TO PROVIDE AN INPUT DEVICE.

20 AND THEN ONCE WE HAVE SET UP THAT ENVIRONMENT,
21 THOSE FIRST TWO CLAIM LIMITATIONS, THEN WE, WITH A
22 SINGLE ENTRY OF THE EXECUTE COMMAND, WHICH MEANS A
23 MOUSE CLICK, A KEYBOARD COMMAND, A MENU SELECTION, A
24 SINGLE ENTRY OF THE EXECUTE COMMAND, BY MEANS OF THE
25 INPUT DEVICE, THEN THE FOLLOWING STEPS HAPPEN AFTER

1 THAT SINGLE COMMAND. FIRSTLY, ANALYZING THE DOCUMENT.
2 SO WE'RE GOING TO LOOK AT THE TEXT THAT THE USER HAS
3 TYPED, WE'RE GOING TO LOOK AT THE DOCUMENT TO DETERMINE
4 WHAT THE USER HAS TYPED AND IDENTIFY FIRST INFORMATION
5 BY DOING THAT.

6 WHEN WE'VE DONE THAT, IF WE FIND FIRST
7 INFORMATION IN THE DOCUMENT, THEN WE SEARCH USING THAT
8 FIRST INFORMATION, WE SEARCH A RECORD RETRIEVAL
9 PROGRAM, SOME DATABASE, SOME FILE OUT THERE. WE JUST
10 WANT TO GET SOME ASSOCIATED INFORMATION BASED ON THAT
11 STUFF THAT WE FOUND, IF WE FIND IT.

12 AND WHEN WE FIND THAT ASSOCIATED INFORMATION,
13 THAT'S WHAT WE CALL THE SECOND INFORMATION, THAT'S WHAT
14 THE CLAIM CALLS THE SECOND INFORMATION, THEN WE HAVE TO
15 DO ONE OF THREE THINGS WITH THAT SECOND INFORMATION
16 DOWN THE BOTTOM HERE. WE EITHER DISPLAY IT, FOR
17 EXAMPLE, WE FOUND SOME INFORMATION ABOUT ENCYCLOPEDIA
18 ENTRY AND WE ARE GOING TO PUT IT ON THE PAGE -- ON THE
19 DISPLAY. INSERT THE SECOND INFORMATION IN THE
20 DOCUMENT, WE HAVE SEEN SOME EXAMPLES. AND COMPLETING
21 THE FIRST INFORMATION IN THE DOCUMENT BASED ON THE
22 FIRST INFORMATION, WHICH MAY BE SOMETHING LIKE
23 CORRECTING A WORD.

24 Q. HOW DO YOU KNOW THAT THE ANALYZING STEP HAS TO COME
25 AFTER THE SINGLE ENTRY OF THE EXECUTE COMMAND?

1 A. SIMPLY BY THE WAY THE CLAIM IS WRITTEN. IT SAYS,
2 "UPON A SINGLE ENTRY OF THE EXECUTE COMMAND"; AND THEN
3 THERE'S A COLON AT THE END OF THAT LIMITATION. AND THE
4 -- UPON A SINGLE ENTRY WITH A COLON, THEN YOU HAVE A
5 LIST OF THINGS THAT HAPPEN AFTER THE COLON. SO AFTER
6 YOU DO THE SINGLE ENTRY, THEN DO THOSE OTHER STEPS THAT
7 I MENTIONED.

8 Q. IS THE REQUIREMENT THAT THE ANALYSIS OF THE
9 DOCUMENT HAPPENED AFTER THE SINGLE ENTRY OF THE EXECUTE
10 COMMAND DESCRIBED ANYWHERE ELSE IN THE PATENT OR IN THE
11 CLAIM?

12 A. YES, IT IS.

13 MR. SCHERKENBACH: CAN WE SWITCH BACK TO THE
14 SCREEN, PLEASE.

15 A. WE'VE SEEN THIS FIGURE, FIGURE 1-A BEFORE.

16 MR. SCHERKENBACH: JUST A MOMENT, WE'RE GOING TO
17 SWITCH HERE.

18 (TECHNICAL DIFFICULTIES)

19 Q. JUST LEAVE IT ON THE ELMO AND WE'LL GO RIGHT TO THE
20 -- YOU SAID FIGURE 1-A, DR. CROFT.

21 A. YES, I'M NOT SEEING ANYTHING.

22 Q. I'M GOING TO SHOW YOU THE ELMO. WE'LL BYPASS THE
23 ELECTRONICS THIS MORNING. WE NEED MORE LITTLE GUYS IN
24 THERE I THINK.

25 SO DO YOU RECOGNIZE FIGURE 1-A OF THE PATENT?

1 IS IT ON YOUR SCREEN THERE?

2 A. YES, IT IS NOW, FIGURE 1-A

3 Q. SO WHAT IS IT IN THIS FIGURE THAT IS RELEVANT TO
4 THE REQUIREMENT THAT THE ANALYSIS HAPPEN AFTER THE
5 SINGLE ENTRY OF THE EXECUTE COMMAND?

6 A. IT'S -- THE FIRST TWO BOXES ON THIS FIGURE, I DON'T
7 KNOW IF THE JURY CAN SEE IT.

8 Q. LET ME TRY TO -- LET ME HIGHLIGHT THOSE. THAT
9 DOESN'T SHOW UP SO WELL.

10 A. IT SAYS "START," USER HITS THE BUTTON IN THE WORD
11 PROCESSOR, AND THEN SECOND BOX ANALYZES WHAT THE USER
12 HAS TYPED IN THE DOCUMENT.

13 Q. ALL RIGHT, AND IS THIS ORDER OF STEPS WHERE YOU
14 HAVE HITTING THE BUTTON AND THEN ANALYZING AFTERWARD
15 DESCRIBED IN THE TEXT OF THE PATENT?

16 A. YES, IT IS.

17 MR. SCHERKENBACH: OH, I'M SORRY. JUST BEFORE
18 WE MOVE ON, YOUR HONOR, I THOUGHT THIS WAS ALREADY
19 BEING SHOWN TO THE JURY, IF IT ISN'T, MAY WE PUBLISH IT
20 TO THE JURY, PLEASE.

21 THANK YOU, YOUR HONOR.

22 Q. SO JUST QUICKLY AGAIN, DR. CROFT, WHICH BOXES IN
23 FIGURE 1-A RELATE TO THE ORDER OF THE STEPS?

24 A. IT'S THE TWO HIGHLIGHTED IN BLUE, WHERE YOU START
25 THE PROCESS BY HITTING THE BUTTON. THIS IS, IN

1 ARENDI'S TERMS, IN THE WORD PROCESSOR. AND THEN AFTER
2 YOU DO THAT ENTRY OF THE EXECUTE COMMAND, YOU ANALYZE
3 WHAT THE USER HAS TYPED IN THE DOCUMENT.

4 Q. NOW, I ASKED YOU WHETHER THERE IS SOME PLACE IN THE
5 SPECIFICATION THAT ALSO RELATES TO THIS QUESTION OF
6 WHEN THE ANALYSIS HAS TO OCCUR. WHAT'S THE ANSWER TO
7 THAT?

8 A. YES, THERE IS, I THINK IT'S IN THE FIRST PAGE OF
9 THE DESCRIPTION OF THE EMBODIMENT.

10 Q. LET ME PUT UP THAT FIRST FULL PAGE, AND I'LL TRY TO
11 ZOOM IN HERE. DO YOU SEE THE PORTION DESCRIBING FIGURE
12 1 BEGINNING ABOUT LINE --

13 A. YES, YOU'VE GOT --

14 Q. -- 22 THERE?

15 A. -- VERY EASY FOR ME. YOU'VE GOT -- IT'S RIGHT
16 WHERE YOU HAVE HIGHLIGHTED THERE, IT SAYS, "IN FIGURE
17 1, AFTER THE USER HAS INSERTED THE ADDRESS IN THE WORD
18 PROCESSOR, THE USER COMMANDS THE BUTTON AT STEP 2 AND
19 THE PROGRAM ANALYZES WHAT THE USER HAS TYPED IN THE
20 DOCUMENT AT STEP 4." SO IT SAYS -- IT'S VERY CLEAR
21 THAT THERE IS A SEQUENCE THERE.

22 Q. LET ME JUST HIGHLIGHT WHAT YOU'VE SAID. HAVE I
23 HIGHLIGHTED THE LANGUAGE THAT YOU BELIEVE IS RELEVANT
24 TO THE ORDER OF THE ANALYZING STEP?

25 A. YES, YOU HAVE.

1 Q. NOW, IN THE PATENT WHAT HAPPENS AFTER THE USER
2 ENTERS THIS SINGLE COMMAND AND THE ANALYSIS STARTS?

3 A. WELL, THE ANALYSIS IS -- THE GOAL OF THE ANALYSIS
4 IS TO DETERMINE WHAT THE USER HAS TYPED. WE ARE
5 LOOKING FOR FIRST INFORMATION TYPE THINGS, ADDRESSES,
6 NAMES, THINGS LIKE THAT. ONCE WE HAVE DONE THAT, IF
7 WE'VE FOUND SOMETHING, THEN WE CALL OUT TO OUR
8 DATABASE, OUR FILE OF SECONDARY INFORMATION, RELATED
9 INFORMATION WITH OUR RECORD RETRIEVAL PROGRAM AND PULL
10 OUT THE INFORMATION THAT IS ASSOCIATED.

11 Q. NOW, IF I PUT OUR CLAIM LANGUAGE BACK UP, WE WERE
12 TALKING ABOUT ANALYSIS. NOW, WHERE IS THE LANGUAGE IN
13 THE CLAIM THAT IS RELEVANT TO WHETHER THE USER CAN
14 SELECT THE SMART TAG IN ORDER TO SEE THE ACTIONS COME
15 UP, WHAT LANGUAGE IS THAT?

16 A. WELL, QUITE SIMPLY, IT'S THE SINGLE ENTRY OF THE
17 EXECUTE COMMAND. IT DOESN'T SAY MULTIPLE ENTRIES, IT
18 PRECLUDES MULTIPLE ENTRIES. AND THAT INCLUDES
19 SELECTION, USER SELECTION OF TEXT OR SMART TAGS.

20 Q. LET'S TALK ABOUT A SAMPLE OF SMART TAG IN A LITTLE
21 BIT MORE DETAIL. FIRST OF ALL, DO WE HAVE TO GO
22 THROUGH EVERY ONE OF THE OUT OF THE BOX SMART TAGS TO
23 UNDERSTAND YOUR ANALYSIS?

24 A. NO, WE DON'T.

25 Q. WHY IS THAT?

1 A. BECAUSE ALL OF THE OUT OF THE BOX SMART TAGS ARE
2 MISSING THE SAME TWO CLAIM LIMITATIONS THAT I'VE BEEN
3 TALKING ABOUT.

4 Q. AND DO YOU HAVE TO GO THROUGH OUT OF THE BOX SMART
5 TAGS IN OFFICE 2003 IN ADDITION TO OFFICE XP TO
6 UNDERSTAND YOUR ANALYSIS?

7 A. NO, THERE'S MAYBE DIFFERENCES IN WHICH APPLICATION
8 HAS WHICH SMART TAGS TURNED ON AND OFF, BUT THEY ALL
9 HAVE THE SAME BASIC OPERATION AND THEY ARE ALL MISSING
10 THE SAME TWO LIMITATIONS THAT I'VE BEEN POINTING OUT.

11 Q. NOW, IF WE COULD GO BACK TO THE COMPUTER AND HAVE
12 THAT UP ON THE SCREEN. THERE WE GO.

13 JUST GOING BACK TO THE EXAMPLE THAT YOU DID FOR
14 THE JURY, DOES THE USER OF SMART TAGS OR MICROSOFT WORD
15 HAVE TO ENTER ANY COMMAND IN ORDER TO HAVE EITHER THE
16 NAME OR THE DATE RECOGNIZED?

17 A. NO, AS WE'VE SEEN MANY TIMES, THIS IS AUTOMATIC, IT
18 HAPPENS AS YOU'RE TYPING IT, AS YOU END A SENTENCE OR
19 END A WORD.

20 Q. AND AFTER RECOGNITION, WHAT IS THE SORT OF
21 INFORMATION THAT THE SYSTEM KNOWS AT THAT POINT ABOUT A
22 SMART TAG?

23 A. WELL, AT THAT POINT IT KNOWS THE TYPE OF THE SMART
24 TAG, IS THIS A PERSON NAME OR A DATE. IT KNOWS THE
25 LOCATION IN THE DOCUMENT. IT KNOWS THE SIZE OF THE

1 SMART TAG. IT KNOWS THE TEXT OF THE SMART TAG.

2 Q. DOES IT KNOW THINGS LIKE TITLES AND PORTIONS OF
3 SMART TAGS?

4 A. YES. AND WE'VE ALSO SEEN IN THINGS LIKE THE PERSON
5 NAME SMART TAG THERE WHERE I'VE GOT A TITLE, IT ALSO
6 NAMES THE PARTS OF THE SMART TAG IF THERE ARE ANY. IN
7 THIS CASE IT KNOWS THAT THE PERSON NAME INCLUDES
8 ANOTHER PART, WHICH IS A TITLE.

9 Q. NOW, IF YOU -- PERHAPS YOU COULD JUST SHOW US THE
10 ACTION MENU FOR EITHER OF THESE SMART TAGS, ON THE
11 SCREEN SO THE JURY CAN SEE IT.

12 A. (WITNESS COMPLIES)

13 Q. IF ONE WERE TO SELECT, SAY FOR A PERSON NAME, THE
14 "INSERT ADDRESS" ACTION, IS THERE ANY ANALYSIS TO
15 DETERMINE WHAT THE USER TYPED IN THE DOCUMENT THAT
16 HAPPENS AFTER THE ACTION SELECTION?

17 A. NO, THERE ISN'T ANY ANALYSIS. WE ALREADY KNOW
18 EVERYTHING ABOUT THE SMART TAGS THAT ARE IN THAT
19 DOCUMENT BEFORE THAT POINT.

20 Q. CAN THE USER -- IF YOU COULD CLEAR THAT OFF THE
21 SCREEN, THE ACTION.

22 CAN THE USER GET TO THE ACTION MENU BY CLICKING
23 SOMEWHERE ELSE IN THE DOCUMENT, IN OTHER WORDS, NOT
24 SELECTING THE SMART TAG?

25 A. YOU CANNOT GET TO THE LIST OF ACTIONS FOR A SMART

1 TAG WITHOUT CLICKING ON THAT SMART TAG. IF YOU CLICK
2 SOMEWHERE ELSE IN THE DOCUMENT, YOU WOULD -- MOST OF
3 THE TIME YOU WOULDN'T GET ANYTHING. REMEMBER, IN THE
4 NORMAL CASE, WE'VE GOT A WHOLE WORD PROCESSING DOCUMENT
5 HERE, NOT THESE EXAMPLES WITH JUST A COUPLE OF WORDS
6 IN, YOU'VE GOT A WHOLE DOCUMENT IN FRONT OF YOU. THERE
7 ARE POTENTIALLY LOTS OF SMART TAGS THERE'S LOTS OF
8 PLACES YOU CAN CLICK ON WHERE YOU WON'T GET ANY ACTION
9 ITEMS AT ALL, AND YOU HAVE TO CHOOSE WHICH SMART TAG
10 YOU ARE INTERESTED IN.

11 Q. WHY IS IT THAT THE PROGRAM, IF YOU CLICK SOMEWHERE
12 OTHER THAN ON THE SMART TAG YOU ARE INTERESTED IN, WHY
13 IS IT THAT THE PROGRAM DOESN'T GIVE YOU OR CAN'T GIVE
14 YOU A LIST OF ACTIONS?

15 A. WELL, IF YOU IMAGINE A REAL DOCUMENT, THE NUMBER OF
16 SMART TAGS, AND YOU CLICK SOMEWHERE ELSE, HOW DOES THE
17 PROGRAM KNOW WHAT ACTIONS YOU WANT CORRESPONDING TO
18 WHAT SMART TAGS. DO WE WANT TO LOOK UP THE WEBSITE FOR
19 SEPTEMBER 22, 2004? YOU COULD GET ALL SORTS OF THE
20 NONSENSICAL COMBINATIONS OF ACTIONS. WE COULD APPLY
21 ALL ACTIONS TO ALL SMART TAGS, YOU GET ALL SORTS OF
22 SILLY COMBINATIONS.

23 YOU REALLY HAVE TO KNOW WHAT SMART TAG, THE
24 CONTEXT, WHAT'S THE CONTEXT FOR THE ACTIONS YOU'RE
25 INTERESTED IN.

1 Q. SO IN YOUR OPINION WHAT ARE THE MINIMUM NUMBER OF
2 COMMANDS THAT IT TAKES TO SELECT A SMART TAG ACTION?

3 A. WELL, I THINK THREE. YOU HAVE TO ISSUE A COMMAND,
4 DO THE STEP OF SELECTING THAT SMART TAG, YOU CAN'T
5 IGNORE THAT, IT ESTABLISHES THE CONTEXT. THE SECOND
6 ONE THAT I CONSIDER A SECOND COMMAND IS TO DECIDE TO
7 SELECT -- TO CLICK ON THE SMART TAGS' ICON, THE BUTTON
8 THERE.

9 Q. THAT'S THE BUTTON, FOR EXAMPLE, THAT'S UNDERNEATH
10 "DR." NOW ON THE SCREEN?

11 A. THAT'S RIGHT. BECAUSE THESE BUTTONS COME UP ALL
12 THE TIME AS YOU ARE MOVING THE CURSOR AROUND IN THE
13 DOCUMENT. EVERY TIME YOU COME UP, YOU DON'T WANT TO
14 BRING DOWN A MENU. YOU WOULD HAVE TO SAY, OH, YEAH, I
15 WANT TO DO AN ACTION ON THAT SMART TAG, I'M GOING TO
16 CLICK ON THAT THING. AND THEN YOU HAVE THE MENU OF
17 ACTIONS, THEN I'VE GOT TO DECIDE WHICH ACTION I WANT
18 AND SELECT THAT ACTION.

19 Q. IS THERE ANY WAY IN SMART TAGS TO BRING UP OR
20 SELECT AN ACTION WITH JUST A SINGLE COMMAND?

21 A. THERE IS NOT.

22 Q. IS THERE ANY WAY IN SMART TAGS TO INITIATE A RECORD
23 RETRIEVAL WITH JUST A SINGLE COMMAND?

24 A. THERE IS NOT.

25 MR. SCHERKENBACH: COULD WE GO BACK TO THE ELMO,

1 PLEASE.

2 Q. SUPPOSE THE JURY DISAGREES WITH YOU AND THINKS ONLY
3 ONE OF THESE ELEMENTS THAT WE HAVE HIGHLIGHTED HERE IN
4 CLAIM 1 IS MISSING, WHAT IS YOUR UNDERSTANDING OF THE
5 SIGNIFICANCE OF THAT?

6 A. WELL, THERE STILL WOULD BE NO INFRINGEMENT BECAUSE
7 YOU ONLY HAVE TO BE MISSING A SINGLE LIMITATION. SO IF
8 THERE WAS ONLY ONE LEFT, THAT STILL MEANS THERE IS NO
9 INFRINGEMENT.

10 Q. WHAT ABOUT THE OTHER SIX ASSERTED CLAIMS, DO WE
11 HAVE TO LOOK AT THOSE INDEPENDENTLY FROM CLAIM 1 FOR
12 PURPOSES OF INFRINGEMENT?

13 A. ALL OF THE OTHER SIX ASSERTED CLAIMS, 2, 7, 13, 14,
14 16 AND 68, THEY ALL INCLUDE THE LIMITATIONS OF CLAIM 1.
15 IF YOU LOOK AT THE TEXT OF THOSE CLAIMS, THEY ALL
16 INCLUDE THESE LIMITATIONS. IT DOESN'T MATTER WHAT
17 OTHER LIMITATIONS THEY HAVE. BECAUSE SMART TAGS
18 DOESN'T HAVE THESE TWO LIMITATIONS, THERE CAN BE NO
19 INFRINGEMENT OF SMART TAGS IN ALL THOSE OTHER CLAIMS AS
20 WELL.

21 Q. WERE YOU HERE DURING MR. KLAUSNER'S TESTIMONY?

22 A. I WAS.

23 Q. DID YOU HEAR HIM SAY THAT THE ANALYSIS REQUIRED BY
24 THE CLAIM HAPPENS AFTER THE SELECTION OF THE ACTION?

25 A. YES, I HEARD THAT.

1 Q. DO YOU AGREE WITH THAT?

2 A. NO, I DON'T.

3 Q. WHY NOT?

4 A. BECAUSE AS I HAVE BEEN SAYING, THE ANALYSIS TO

5 DETERMINE WHAT THE INFORMATION -- WHAT THE USER HAS

6 TYPED IN THAT HAS HAPPENED AT RECOGNITION TIME. WE

7 ALREADY KNOW EVERYTHING ABOUT WHAT THE USER HAS TYPED

8 IN AS THE USER IS TYPING IT, BEFORE WE GET TO ANY

9 CHOICE OF A SMART TAG ACTION.

10 Q. NOW, WHAT YOU JUST SAID ABOUT KNOWING THAT THE

11 ANALYSIS HAS HAPPENED ALREADY AT THE TIME OF

12 RECOGNITION, IS THAT TRUE FOR EVERY ONE OF THE EXAMPLES

13 THAT MR. KLAUSNER GAVE?

14 A. EVERY ONE OF THEM. ANYTHING THAT COULD BE

15 CONSIDERED FIRST INFORMATION IS ALREADY RECOGNIZED AT

16 THE RECOGNITION TIME, BEFORE ANY ACTION IS CHOSEN.

17 Q. NOW, LOOKING AT YOUR SCREEN, OTHER THAN THE FACT

18 THAT THERE IS A DOTTED PURPLE UNDERLINE, HOW ELSE DO

19 YOU KNOW THAT THE ANALYSIS OF THE DOCUMENT HAS ALREADY

20 OCCURRED?

21 A. WELL, I GUESS ONE WAY IS THAT YOU CAN LOOK AT THE

22 MENU AND IT HAS ALREADY GOT THE NAME OF THE PERSON AND

23 THE -- IT SAYS IT IS A PERSON TAG, AND IT'S GOT THE

24 ENTIRE TEXT OF THE TAG RIGHT THERE ON THE TOP OF THE

25 MENU BEFORE WE CHOOSE AN ACTION.

1 Q. BEFORE YOU GO ON, LET ME STEP THROUGH THAT. SO YOU
2 ARE REFERRING TO THE FIRST LINE OF THE MENU FOR PERSON
3 NAME?

4 A. EXACTLY. AND EVERY SMART TAG, YOU SEE THE SAME
5 FIRST LINE WHICH SAYS THE TYPE AND THE TEXT OF THE
6 SMART TAG.

7 Q. AND WHAT HAS THAT GOT TO DO WITH KNOWING THAT THE
8 PROGRAM HAS ALREADY ANALYZED THE DOCUMENT?

9 A. WELL, WE HAVEN'T SELECTED AN ACTION YET AND IT IS
10 ALREADY TELLING US WHAT THE TEXT OF THE -- WHAT THE
11 SMART TAG IS AND WHAT TYPE IT IS, ETC.

12 Q. IS THERE ANYTHING ELSE OR ANY OTHER WAY THAT YOU
13 KNOW THAT THE ANALYSIS HAS ALREADY OCCURRED, OTHER THAN
14 DOTTED PURPLE UNDERLINE AND THE TITLE OF THE MENU?

15 A. WELL, DR. REYNAR SHOWED YOU THE HTML VERSION OF THE
16 DOCUMENT, WHICH HAD ALL THE TAGGING IN IT WHICH IS A
17 REPRESENTATION OF WHAT MICROSOFT WORD STORES IN ITS
18 DOCUMENT TO RECORD ALL THIS INFORMATION ABOUT SMART
19 TAGS. AND YOU SAW ALL THOSE TAGS, WHICH INDICATED THAT
20 THE PROGRAM HAD RECOGNIZED TITLES AND PERSON NAMES AND
21 DATES AND ALL THAT SORT OF STUFF, IT WAS ALL IN THERE,
22 IN YOUR DOCUMENT.

23 Q. NOW, WE'VE SEEN ALREADY A NUMBER OF EXAMPLES OF
24 THIS, BUT CAN YOU SHOW US JUST QUICKLY, OR YOUR
25 EXAMPLE, WHAT THE SOURCE OF THIS DOCUMENT LOOKS LIKE?

1 A. YES, THE HTML REPRESENTATION WHICH IS CALLED THE
2 SOURCE IN THESE MENUS, SO I DID A WEB-PAGE PREVIEW,
3 WHICH TURNS THIS INTO AN HTML REPRESENTATION. AND THEN
4 I'M DOING A RIGHT CLICK HERE, GOING TO VIEW THE SOURCE
5 AND WE SEE ALL THIS GOBBLY-GOOK WHICH IS ABOUT
6 FORMATTING INFORMATION. AND WE GO DOWN TO THE BOTTOM
7 AND ONCE AGAIN WE SEE THE TAGS HERE FOR PERSON NAME,
8 TITLE -- WITHIN -- TO DO THE WHOLE PERSON NAME, SO
9 THAT'S THE WHOLE -- ALL THE TAGGING FOR THE TEXT IN
10 THAT DOCUMENT HAVING TO DO WITH PERSON NAME. IT HAS
11 THE TAGS INDICATING THE START AND THE END OF THE PERSON
12 NAME, AND IT HAS THE TAGS INDICATING THE START AND THE
13 END OF THE TITLE PART AND THE GIVEN NAME PART, AND THE
14 SURNAME PART OF THAT PERSON NAME. AND SIMILARLY, YOU
15 SEE THE SAME THING FOR THE DATE.

16 Q. NOW, IF WE WERE TO LOOK AT THE HTML SOURCE FOR
17 EVERY ONE OF MR. KLAUSNER'S EXAMPLES, WOULD WE
18 SIMILARLY SEE THAT THE TAGS EXISTED AND THE SMART TAG
19 TEXT WAS CONTAINED WITHIN THESE TAGS?

20 A. YOU WOULD.

21 Q. DO YOU AGREE WITH MR. KLAUSNER THAT SIMPLY LOCATING
22 INFORMATION IS NOT ANALYSIS?

23 A. ABSOLUTELY.

24 Q. DID YOU HEAR MR. KLAUSNER SAY THAT A COMPLEX
25 LOCATING PROCESS LIKE ONE INVOLVING A SERIES OF

1 INDIRECTIONS WAS ANALYSIS?

2 A. I DID HEAR THAT, YES.

3 Q. DO YOU AGREE WITH THAT?

4 A. NO, I JUST DON'T AGREE WITH THAT. GETTING OR

5 FINDING INFORMATION THAT YOU ALREADY KNOW, ALL THIS TAG

6 STUFF, ALL THIS INFORMATION ABOUT THE SMART TAGS IS

7 ALREADY THERE, JUST GETTING THAT IS NOT WHAT I CONSIDER

8 ANALYSIS. AND IN ADDITION, MOST COMPUTER PROGRAMS THAT

9 HAVE TO DO WITH GETTING INFORMATION OR LOCATING

10 INFORMATION INVOLVE SOME LEVEL OF INDIRECTION. IT IS

11 VERY COMMON TO SAY, OKAY, THE THING YOU'RE LOOKING FOR

12 IS HERE, WHEN YOU GET THERE YOU SAY, NO, IT'S ACTUALLY

13 OVER THERE, WHEN YOU GET THERE, YOU SAY, WELL, IT'S

14 ACTUALLY OVER THERE AND YOU GET THERE AND YOU FIND WHAT

15 YOU'RE LOOKING FOR. THAT IS VERY COMMON IN COMPUTER

16 PROGRAMS; IT'S STILL JUST GETTING THE INFORMATION, JUST

17 GOING THROUGH A FEW STEPS.

18 Q. IN REACHING YOUR OPINIONS DID YOU CONSIDER THE

19 SOURCE CODE FOR SMART TAGS?

20 A. I DID.

21 Q. DID YOU FIND ANYTHING IN THE SOURCE CODE SHOWING

22 THAT ANY ANALYSIS OF THE DOCUMENT HAPPENS AFTER THE

23 USER SELECTS AN ACTION?

24 A. I DIDN'T FIND ANYTHING IN THE SOURCE CODE THAT IS

25 ANALYSIS IN THE SENSE OF DETERMINING WHAT THE USER HAS

1 TYPED. WHAT I FOUND WAS THIS GETTING THIS INFORMATION
2 THAT HAD ALREADY BEEN STORED IN THE DOCUMENT.

3 Q. DID YOU ANALYZE ANY PARTICULAR CUSTOM SMART TAGS?

4 A. I DID NOT.

5 Q. WHY NOT?

6 A. WELL, FOR A VARIETY OF REASONS. MR. KLAUSNER, IN
7 HIS EXPERT REPORT, NEVER SUGGESTED THAT THE CUSTOM
8 SMART TAGS INFRINGED THE ARENDI PATENT. AND IN
9 ADDITION, CUSTOM SMART TAGS, EVERY ONE OF THEM IS
10 DIFFERENT AS THE NAME SAYS, IT IS CUSTOM. SO WITHOUT
11 THE CODE FOR A PARTICULAR SMART TAG I COULDN'T EVEN
12 BEGIN TO ANALYZE A PARTICULAR CUSTOM SMART TAG.

13 Q. DID YOU CONSIDER THE ONE CUSTOM SMART TAG THAT
14 MR. KLAUSNER SHOWED THE JURY?

15 A. I DID.

16 Q. DOES THAT ONE INFRINGE?

17 A. NO, IT DOESN'T.

18 Q. WHY NOT?

19 A. THIS WAS THE ONE WITH THE PART NAME, WHICH PULLED
20 OUT THE -- MORE INFORMATION ABOUT THE PART FROM THE
21 DATABASE, AND PUT IT INTO THE DOCUMENT. AND WE SAW IN
22 THAT EXAMPLE, JUST WITH EVERY OTHER SMART TAG, IT WAS
23 RECOGNIZED AS IT WAS TYPED IN. THE FIRST INFORMATION,
24 IF YOU WANT TO CALL IT THAT, WAS ALREADY-RECOGNIZED
25 BEFORE THE ACTION WAS CALLED UP ON THE MENU AND

1 EXECUTED. SO THE ACTION COMMAND DID THE ADDITIONAL
2 STEP OF PULLING IN SOME INFORMATION FROM THE RECORD
3 RETRIEVAL, BUT, AS I SAID, THE ANALYSIS HAS ALREADY
4 BEEN DONE.

5 IN ADDITION, ONCE AGAIN, WE HAVE TO SELECT THAT
6 PART NAME SMART TAG BEFORE WE EVEN GET ACCESS TO THE
7 ACTION OF FINDING THE ADDITIONAL PART NAME INFORMATION.
8 I COULDN'T HAVE SELECTED THE DATE AND SAID FIND THE
9 ADDITIONAL PART NAME INFORMATION. IT DOESN'T MAKE ANY
10 SENSE. I HAVE TO SELECT THAT PART NAME AND THAT'S PART
11 OF THE STEPS THAT ARE REQUIRED TO EXECUTE AN ACTION IN
12 SMART TAGS.

13 Q. TO THE EXTENT THAT ANY OTHER CUSTOM SMART TAGS ARE
14 ACCUSED OF INFRINGEMENT, IF THEY WORK IN THE SAME WAY
15 AS OUT OF THE BOX SMART TAGS AS MR. KLAUSNER SAYS, DOES
16 YOUR ANALYSIS FOR OUT OF BOX SMART TAGS APPLY TO THOSE
17 OTHER CUSTOM SMART TAGS?

18 A. YES, IT DOES.

19 Q. ALL RIGHT. WHAT ABOUT MR. KLAUSNER'S ARGUMENT THAT
20 LOOKING AGAIN OR LOOKING BACK AT ALREADY RECOGNIZED
21 SMART TAGS CAN BE ANALYSIS. DO YOU AGREE WITH THAT?

22 A. NO, I DON'T AGREE WITH THAT.

23 Q. WHY NOT?

24 A. WELL, FOR THE SAME REASONS I JUST SAID. THERE'S
25 REALLY TWO MAIN REASONS, I GUESS. ONE IS THAT THE --

1 AS I SAID, THE JUST GETTING AND FINDING, LOOKING BACK
2 IS NOT ANALYSIS TO DETERMINE WHAT THE USER HAS TYPED
3 IN. WE ALREADY KNOW WHAT THE USER HAS TYPED IN, THE
4 INFORMATION IS ALREADY RECORDED. AND -- I'M SORRY, I'M
5 HAVING A --

6 Q. WE TALKED ABOUT --

7 A. -- A BIT NERVOUS.

8 Q. WE TALKED ABOUT SIMPLY LOCATING BEING ANALYSIS AND
9 YOU SAID IT'S NOT, IS THAT RIGHT?

10 A. THAT'S RIGHT.

11 Q. HOW ABOUT LOOKING AT ALREADY RECOGNIZED SMART TAGS,
12 IS THAT ANALYSIS?

13 A. NO, I CONSIDER THAT IN THE SAME GROUP AS FINDING OR
14 GETTING. IT IS NOT DETERMINING WHAT THE USER HAS TYPED
15 IN, IT IS JUST GETTING INFORMATION THAT ALREADY EXISTS.

16 Q. HOW ABOUT FETCHING INFORMATION THAT HAS ALREADY
17 BEEN RECOGNIZED, IS THAT ANALYSIS?

18 A. NO, IT ISN'T.

19 Q. DID HEARING DR. -- EXCUSE ME -- MR. KLAUSNER'S
20 TESTIMONY HERE DURING TRIAL CAUSE YOU TO CHANGE YOUR
21 INFRINGEMENT/NONINFRINGEMENT OPINIONS IN ANY WAY?

22 A. NO, IT DIDN'T.

23 Q. LET'S GO ON TO INVALIDITY. DO YOU HAVE AN OPINION
24 AS TO WHETHER THE ASSERTED CLAIMS OF THE ARENDI PATENT
25 ARE VALID?

1 A. I DO.

2 Q. WHAT IS YOUR OPINION?

3 A. MY OPINION IS THAT ALL OF THE ASSERTED CLAIMS ARE
4 INVALID AND SHOULDN'T HAVE BEEN GRANTED AS A PATENT.

5 Q. AND WHAT'S THE BASIS, GENERALLY, FOR YOUR OPINION
6 OF INVALIDITY?

7 A. WELL, I HAVE TO LOOK AT THE CLAIMS, I HAVE TO
8 UNDERSTAND WHAT THEY MEAN. I HAVE TO CONSIDER THEM
9 INDEPENDENTLY, BECAUSE IN THE -- INVALIDITY IS LIKE THE
10 FLIP SIDE OF INFRINGEMENT, AND I HAVE TO CONSIDER NOW
11 EVERY CLAIM AS A SEPARATE INVENTION. AND WHAT I'M
12 DOING IS LOOKING FOR -- CONSIDERING WHERE THE PRIOR ART
13 CONTAINS ALL OF THE LIMITATIONS SPECIFIED IN EACH
14 CLAIM. AND IF I FIND PRIOR ART THAT CONTAINS ALL OF
15 THE LIMITATIONS IN A GIVEN CLAIM, THEN THAT CLAIM IS
16 INVALID.

17 Q. IN ARRIVING AT YOUR OPINION OF INVALIDITY, DID YOU
18 RELY ON ANY OF THE SAME PRIOR ART THAT THE EXAMINER HAD
19 CONSIDERED?

20 A. WELL, I CERTAINLY LOOKED AT --

21 MR. HAYES: OBJECTION. NO FOUNDATION.

22 THE COURT: READ THAT QUESTION BACK, PLEASE.

23 (QUESTION READ BACK)

24 THE COURT: FIRST WE NEED TO ESTABLISH WHAT HE
25 KNOWS ABOUT WHAT THE EXAMINER CONSIDERED. SUSTAINED.

1 MR. SCHERKENBACH: WE'LL DO THAT.

2 Q. HOW DO YOU KNOW WHAT PRIOR ART THE EXAMINER HAS
3 CONSIDERED?

4 A. IT'S ON THE COVER OF THE PATENT.

5 Q. LET'S TAKE A LOOK AT THAT. I TAKE IT YOU RECOGNIZE
6 THE COVER OF ARENDI'S PATENT?

7 A. YES, I DO.

8 MR. SCHERKENBACH: CAN THIS BE SHOWN TO THE
9 JURY, PLEASE. OKAY.

10 Q. WHAT, IF ANYTHING, ON THE COVER OF THE PATENT DID
11 YOU RELY ON IN REACHING AN UNDERSTANDING AS TO WHAT THE
12 EXAMINER CONSIDERED?

13 A. WELL, IF YOU LOOK AT THE SECTION ENTITLED,
14 "REFERENCES CITED," THAT'S A LIST OF WHAT THE PATENT
15 EXAMINER CONSIDERED. IF YOU LOOK AT THOSE, IT'S A
16 FAIRLY LONG LIST THERE OF PATENTS, THEY ARE ALL
17 PATENTS. PATENTS ARE NOT THE ONLY TYPE OF PRIOR ART.
18 THERE ARE PUBLICATIONS IN THESE JOURNALS AND
19 CONFERENCES THAT I MENTIONED, THAT'S ALSO PRIOR ART.
20 COMMERCIAL SYSTEMS AND PRODUCTS ARE PRIOR ART, THINGS
21 LIKE THAT. ANYTHING THAT'S IN THE PUBLIC DOMAIN IS
22 PRIOR ART. THE ONLY TYPE OF PRIOR ART THAT THE PATENT
23 EXAMINER CONSIDERED ARE PATENTS AND THESE PATENTS
24 SPECIFICALLY.

25 MR. HAYES: OBJECTION.

1 THE COURT: THE JURY WILL DISREGARD THE PORTION
2 OF THE ANSWER IN WHICH DR. CROFT SAYS WHAT THE PATENT
3 EXAMINER CONSIDERED, WHAT OTHER PRIOR ART THE PATENT
4 EXAMINER MAY HAVE CONSIDERED.

5 Q. HAVE YOU SEEN ANY EVIDENCE THAT THE EXAMINER
6 REVIEWED ANY SOFTWARE PRODUCTS OR SOFTWARE
7 DOCUMENTATION WHEN CONSIDERING WHETHER TO ALLOW
8 ARENDI'S PATENT TO ISSUE?

9 MR. HAYES: OBJECTION. NO FOUNDATION.

10 THE COURT: YOU MAY ANSWER THAT YES OR NO,
11 DR. CROFT.

12 A. I HAVE NOT SEEN ANY EVIDENCE OF THAT.

13 Q. HAVE YOU SEEN --

14 THE COURT: WAIT. I GUESS I MISINTERPRETED THE
15 QUESTION. I'LL SUSTAIN THE OBJECTION TO THAT QUESTION,
16 THE JURORS WILL DISREGARD THE LAST ANSWER.

17 Q. DR. CROFT, DID YOU REVIEW THE PROSECUTION HISTORY
18 OF ARENDI'S PATENT?

19 A. I DID.

20 Q. WITHOUT TELLING US THE CONTENTS, TELL US GENERALLY
21 WHAT THE PROSECUTION HISTORY CONTAINS?

22 A. IT CONTAINS A RECORD OF THE NEGOTIATION BETWEEN THE
23 PATENT APPLICANT, THE PERSON APPLYING FOR THE PATENT,
24 AND THE PATENT AND TRADEMARK OFFICE AS THEY NEGOTIATE
25 WHAT THE CLAIMS MEAN.

1 Q. HAVING REVIEWED THE PATENT AND THE PROSECUTION
2 HISTORY, HAVE YOU SEEN ANY EVIDENCE SUGGESTING TO YOU
3 THAT THE EXAMINER REVIEWED SOFTWARE PRODUCTS OR
4 SOFTWARE DOCUMENTATION?

5 A. NO, I'VE NOT SEEN ANY EVIDENCE OF THAT.

6 MR. HAYES: I MOVE TO STRIKE. THERE'S NO
7 FOUNDATION FOR THAT QUESTION, JUDGE.

8 THE COURT: OVERRULED, DENIED.

9 Q. AND HAVING REVIEWED THE PATENT IN THE PROSECUTION
10 HISTORY, HAVE YOU SEEN ANY EVIDENCE THAT THE PATENT
11 EXAMINER CONSIDERED PRIOR ART REFERENCES THAT ARE NOT
12 LISTED ON THE FACE OF THE PATENT?

13 A. SIMILARLY, I HAVE NOT SEEN ANY EVIDENCE OF THAT.

14 Q. NOW, YOU MENTIONED EARLIER THAT ONE OF THE ENTITIES
15 THAT YOUR CENTER FOR INTELLIGENT INFORMATION RETRIEVAL
16 HAD DONE SOME WORK FOR WAS THE PATENT AND TRADEMARK
17 OFFICE; IS THAT RIGHT?

18 A. THAT'S CORRECT.

19 Q. WHEN DID THAT HAPPEN?

20 A. THAT WAS A CONTRACT WE HAD WITH THEM, A RESEARCH
21 CONTRACT BETWEEN 1996 AND 2000.

22 Q. AND WHAT WAS THE CONTRACT FOR?

23 A. IT WAS A CONTRACT TO DEVELOP BETTER SEARCH
24 TECHNIQUES FOR THE PATENT AND TRADEMARK OFFICE, TO
25 DEVELOP SYSTEMS THAT WOULD HELP THEM FIND PRIOR ART

1 MORE EFFECTIVELY.

2 Q. HOW DID YOU GET THE CONTRACT?

3 A. WE APPLIED FOR -- THERE WAS A REQUEST FOR PROPOSALS
4 PUBLISHED ABOUT THIS AREA BY THE PATENT AND TRADEMARK
5 OFFICE ASKING FOR PROPOSALS --

6 MR. HAYES: OBJECTION, IT'S HEARSAY. MOVE TO
7 STRIKE.

8 THE COURT: READ THE QUESTION BACK, PLEASE.

9 (QUESTION READ BACK)

10 THE COURT: WOULD YOU STATE YOUR ANSWER AGAIN,
11 PLEASE, DR. CROFT.

12 A. YES. WE APPLIED BASED ON A REQUEST FOR PROPOSALS
13 THAT WAS PUBLISHED PUBLICLY WHICH DESCRIBED THE SORTS
14 OF TECHNOLOGIES THAT THE PATENT AND TRADEMARK OFFICE
15 WAS LOOKING FOR, AND WE WROTE A PROPOSAL ADDRESSING
16 THAT AND THEN WON THE CONTRACT BASED ON THAT PROPOSAL.

17 Q. WHO WROTE THE PROPOSAL?

18 A. I WROTE THE PROPOSAL.

19 Q. WHAT DID YOU PROPOSE TO DO?

20 A. WE HAVE -- AT THE TIME WE HAD A SEARCH ENGINE. I
21 MENTIONED ALL OF THESE APPLICATIONS THAT WE HAD DONE IN
22 THE CENTER, OUR SEARCH ENGINE IS CALLED INQUIRY. AND I
23 -- WHAT I WROTE THE PROPOSAL WAS TO TAKE THIS SEARCH
24 ENGINE AND TO CUSTOMIZE IT TO DEAL WITH THESE
25 INCREDIBLE COMPLEX DOCUMENTS, THESE PATENTS DON'T LOOK

1 LIKE WEB PAGES, FOR EXAMPLE. SO WE WROTE THE PROPOSAL
2 TO CUSTOMIZE THE SEARCH ENGINE TO DEAL WITH -- TO
3 ANALYZE COMPLEX PATENTS AND DO A BETTER JOB OF FINDING
4 PATENTS WHICH WERE RELATED TO PATENTS THAT WERE
5 APPLICATIONS -- APPLICATION PATENTS.

6 Q. HOW MUCH WAS THE CONTRACT WORTH?

7 A. IT WAS \$2.6 MILLION OVER THREE YEARS.

8 Q. DID YOU DELIVER A SYSTEM TO THE PTO?

9 A. WE DID SUCCESSFULLY DEMONSTRATE A SYSTEM TO THEM,
10 ACTUALLY A COUPLE OF SYSTEMS BECAUSE WE WERE ALSO
11 WORKING WITH TRADEMARK RETRIEVAL AS WELL AS PATENT
12 RETRIEVAL AND WE ALSO HAD IT RUNNING ON OUR WEBSITE FOR
13 A WHILE.

14 Q. WHAT WAS YOUR ROLE IN THE PROJECT OF ACTUALLY DOING
15 THE WORK ON THESE SYSTEMS?

16 A. I WAS THE LEAD SYSTEM ARCHITECT, I GUESS YOU'D CALL
17 IT, THE PERSON WHO SAYS WE SHOULD CUSTOMIZE OUR SYSTEM;
18 TO DEAL WITH PATENTS WE'VE GOT TO TRY THIS IDEA, THAT
19 IDEA -- I'M SORRY -- YES, AND I WAS THE PERSON WHO
20 SUGGESTED WHAT IDEAS TO TRY TO CUSTOMIZE IT, TO IMPROVE
21 THE PERFORMANCE OF THE SEARCH ENGINE FOR THE PATENTS,
22 AND I MANAGED THE WHOLE PROJECT.

23 Q. DID THE PTO ACTUALLY ROLL OUT YOUR SYSTEM IN THE
24 OFFICE?

25 A. NO, THEY DIDN'T. THERE WAS SOME MANAGEMENT CHANGE

1 AND SOME FUNDING DIFFICULTIES AND SO IT -- THAT NEVER
2 HAPPENED.

3 Q. HOW DO THE REFERENCES THAT YOU CONSIDERED IN YOUR
4 -- REACHING YOUR INVALIDITY OPINION COMPARE AGAINST THE
5 PRIOR ART THAT THE EXAMINER CONSIDERED AND CITED ON THE
6 FACE OF THE PATENT?

7 A. WELL, IN MY OPINION, THEY ARE MUCH CLOSER TO THE
8 '853 PATENT THAN THE ONES THAT THE EXAMINER CONSIDERED.

9 Q. AND HOW DID YOU GO ABOUT COMPARING THE PRIOR ART
10 THAT YOU RELY ON AGAINST THE ASSERTED CLAIMS OF THE
11 PATENT?

12 A. WELL, AS I MENTIONED BEFORE, ONCE I UNDERSTOOD THE
13 CLAIMS, READ THE PATENT, UNDERSTOOD THE CLAIMS, AND
14 THEN I CONSIDER EVERY CLAIM AS A SEPARATE INVENTION,
15 AND THEN I HAVE TO LOOK AT EACH PIECE OF PRIOR ART AND
16 SAY, WELL, DOES THIS PRIOR ART CONTAIN ALL OF THE
17 LIMITATIONS SPECIFIED IN THAT CLAIM. AND IF IT DOES,
18 THEN IT IS -- IT ANTICIPATES THAT CLAIM, AND THE CLAIM
19 IS VALID.

20 THE COURT: WE'LL HAVE TO STOP THERE FOR THE
21 MORNING RECESS, MR. SCHERKENBACH. MEMBERS OF THE JURY
22 MAY RETURN TO THE JURY ROOM.

23 (JURY EXCUSED)

24 THE COURT: YOU MAY STEP DOWN, DR. CROFT.

25 (WITNESS EXCUSED)

1 MR. HAYES: YOUR HONOR, ARE WE GOING BACK TO
2 MILLER NOW AFTER THE BREAK HERE?

3 THE COURT: AFTER LUNCH, I THINK.

4 MR. HAYES: IS IT LUNCH OR THE BREAK?

5 MR. SCHERKENBACH: WELL, ACTUALLY, IF WE CAN GET
6 IT WORKING, I WOULD BE HAPPY TO GO BACK AFTER THE
7 BREAK.

8 THE COURT: I WILL RECONSIDER, MR. HAYES, IF YOU
9 -- DID YOU WANT AN OPPORTUNITY TO CROSS-EXAMINE IN THE
10 MIDDLE OF DR. CROFT'S TESTIMONY OR ARE YOU CONCERNED
11 THAT YOU MIGHT BE FORCED TO CROSS-EXAMINE HIM BEFORE
12 HIS TESTIMONY WAS COMPLETED?

13 MR. HAYES: WELL, ACTUALLY THE WAY IT'S SORT OF
14 COMING OUT NOW, WHAT I WOULD PREFER IS WHY DOESN'T HE
15 JUST FINISH UP DR. CROFT AND I'LL EXAMINE DR. CROFT,
16 AND THEN THEY CAN BRING MILLER BACK ON. OTHERWISE, IT
17 IS TOO DISJOINTED. I MEAN, CROFT IS SAYING A, B, C,
18 THE PATENT DOES NOT INFRINGE, BLAH, BLAH, BLAH. I
19 WOULD LIKE TO GET UP THE MINUTE HE STOPS AND GET MY
20 SHOT AT HIM.

21 THE COURT: WELL, IT'S GOING TO BE A LITTLE BIT
22 DISJOINTED NO MATTER WHICH WAY YOU DO IT BECAUSE WE
23 HAVE HAD SOME TESTIMONY FROM MR. MILLER AND THEN HE IS
24 GOING TO RETURN TO THE STAND.

25 MR. HAYES: MILLER WAS ONLY ON FOR A COUPLE OF

1 MINUTES.

2 MR. SCHERKENBACH: AND DR. CROFT WILL RELY ON
3 MR. MILLER'S TESTIMONY INCLUDING THE DEMONSTRATION HE
4 IS GOING TO DO. I'M NOT SURE IT WOULD WORK TO FINISH
5 THE CROSS OF DR. CROFT AHEAD OF TIME.

6 THE COURT: IF THE PROBLEM IS NOT STRAIGHTENED
7 OUT BY LUNCHTIME, MR. SCHERKENBACH, YOU'LL HAVE TO GO
8 WITH MR. MILLER WITHOUT THE COMPUTER. AND I'VE ASKED
9 ONE OF OUR COMPUTER PEOPLE TO COME UP HERE AT THE
10 RECESS TO SEE IF HE CAN HELP STRAIGHTEN OUT WHATEVER
11 THE PROBLEM IS. I DON'T KNOW WHETHER IT'S ON OUR END
12 OR YOUR END.

13 MR. SCHERKENBACH: IF WE CAN GET IT STRAIGHTENED
14 OUT AND BE READY TO GO WITH MR. MILLER AFTER THE BREAK,
15 SHALL WE DO THAT?

16 THE COURT: YES.

17 (MORNING RECESS 11:22 TO 11:38 A.M.)

18 THE COURT: BRING THE JURY IN, PLEASE.

19 MR. SCHERKENBACH: YOUR HONOR, TWO QUICK
20 QUESTIONS, IF I MAY. MR. SMITH, TO DO HIS EXAMINATION,
21 WOULD LIKE TO DO IT FROM THE PODIUM THERE SO THAT HE
22 CAN SEE THE SCREEN. WE CAN'T REALLY SEE IT FROM THERE.

23 THE COURT: WHAT EXAMINATION IS THIS?

24 MR. SCHERKENBACH: MR. MILLER. AND IT WILL BE
25 REMOVED IMMEDIATELY WHEN HE'S DONE.

1 THE COURT: OKAY.

2 MR. SCHERKENBACH: AND THE OTHER IS WE WANTED
3 DR. CROFT TO SEE THIS, AND HE WOULD NEED TO STAND,
4 AFTER THE JURY IS SEATED, IN THE CORNER OVER HERE TO
5 SEE, OR BY THE CHAIRS. WOULD THAT BE APPROPRIATE?

6 THE COURT: HE CAN SIT IN ONE OF THOSE CHAIRS, I
7 THINK.

8 MR. HAYES: CAN MR. KLAUSNER LIKEWISE DO SO,
9 SIR?

10 THE COURT: WELL, THERE ARE ONLY TWO CHAIRS
11 THERE AND ONE IS FOR THE CSO. IF YOU MOVE YOUR BOXES,
12 I THINK THEY COULD PROBABLY SIT OVER THERE.

13 (JURY PRESENT)

14 THE COURT: MR. MILLER, WOULD YOU RETURN TO THE
15 STAND, PLEASE.

16 PLEASE BE SEATED, LADIES AND GENTLEMEN. WE'RE
17 RETURNING TO MR. MILLER'S TESTIMONY. WE ARE GOING TO
18 INTERRUPT THE TESTIMONY OF DR. CROFT, AND COUNSEL HAVE
19 GONE TO PLAN B FOR COMPUTER ASSISTANCE FOR MR. MILLER.

20 MR. MILLER, DO YOU UNDERSTAND THAT YOU ARE STILL
21 UNDER OATH?

22 THE WITNESS: YES, I DO, YOUR HONOR.

23 THE COURT: MR. SMITH?

24 MR. SMITH: THANK YOU, YOUR HONOR.

25

1 DEFENDANT'S WITNESS, JAMES MILLER, RESUMES

2 CONTINUED DIRECT EXAMINATION

3 BY MR. SMITH:

4 Q. YESTERDAY, MR. MILLER, WE WERE DISCUSSING APPLE
5 DATA DETECTORS AND CLARIS EMAILER SOFTWARE; DO YOU
6 REMEMBER THAT?

7 A. YES, I DO.

8 Q. WHAT ROLE DID YOU PLAY IN THE DEVELOPMENT OF APPLE
9 DATA DETECTORS?

10 A. I WAS THE MANAGER OF THE TEAM THAT ORIGINALLY
11 CONCEIVED OF THE IDEA OF APPLE DATA DETECTORS, AND I
12 OVERSAW THE PROJECT FROM ITS FIRST IDEAS TO A SHIPPING
13 PRODUCT. I ALSO MANAGED SOME OF THE PROGRAMMERS WHO
14 WERE WORKING ON THE SYSTEM AND I DEVELOPED SOME OF THE
15 SOFTWARE MYSELF.

16 Q. AND DID YOU WRITE ANY OF THE SOFTWARE FOR APPLE
17 DATA DETECTORS?

18 A. YES. I WROTE ALMOST ALL OF THE DETECTORS USED IN
19 THE SYSTEM, AND I BELIEVE I WROTE ALL OF THE ACTIONS.

20 Q. AND WHAT DO YOU MEAN BY DETECTORS?

21 A. DETECTORS ARE SMALL BITS OF COMPUTER CODE THAT ARE
22 MEANT TO LOOK FOR A VERY SPECIFIC PIECE OF INFORMATION.
23 LIKE WE WANTED TO BE ABLE TO OPERATE ON E-MAIL
24 ADDRESSES, WELL, WE OBVIOUSLY COULDN'T PUT EVERY E-MAIL
25 ADDRESS IN THE WORLD INTO THE SYSTEM, SO WE HAD

1 DESCRIPTIONS OF WHAT AN E-MAIL ADDRESS LOOKED LIKE THAT
2 WE DEFINED AND LOADED INTO THE SYSTEM. WE DID THE SAME
3 THINGS FOR THE OTHER KIND OF INFORMATION WE WERE
4 INTERESTED IN, WEBSITE ADDRESSES, CITY/STATE
5 COMBINATIONS AND A LOT OF OTHER THINGS, ACTUALLY.

6 Q. AND YOU ALSO MENTIONED ACTION SCRIPTS?

7 A. YES.

8 Q. WHAT IS THAT?

9 A. THESE ARE OTHER SMALL PIECES OF COMPUTER CODE THAT
10 WHEN THEY'RE GIVEN A PIECE OF INFORMATION FOUND BY ONE
11 OF THE DETECTORS, KNOWS HOW TO DO SOMETHING WITH IT.
12 SO IF AN E-MAIL ADDRESS IS FOUND, AN ACTION SCRIPT
13 WOULD TELL AN E-MAIL PROGRAM MAKE A NEW E-MAIL -- OR A
14 NEW E-MAIL MESSAGE ADDRESSED TO THIS E-MAIL ADDRESS.
15 IN THAT WAY THE USER DOESN'T HAVE TO MANUALLY GO FIND
16 THE E-MAIL PROGRAM, OPEN IT UP, OPEN UP A NEW E-MAIL
17 FORM, TYPE IN THE ADDRESS. THE SYSTEM WILL DO THAT ALL
18 AUTOMATICALLY FOR THEM.

19 SIMILARLY, ANOTHER ACTION SCRIPT WOULD TAKE THAT
20 E-MAIL ADDRESS AND PUT IT INTO AN ELECTRONIC ADDRESS
21 BOOK. WE WOULD THEN WRITE ACTION SCRIPTS FOR OTHER
22 KIND OF INFORMATION. SO IF THE SYSTEM FOUND A WEBSITE
23 ADDRESS YOU, OF COURSE, WOULD LIKE TO BE ABLE TO OPEN
24 THAT WEBSITE ADDRESS IN A WEB BROWSER SO THE USER CAN
25 SEE IT. YOU MIGHT ALSO ADD THAT WEBSITE ADDRESS TO THE

1 LIST OF BOOKMARKS SO THE USER CAN COME BACK AND LOOK AT
2 IT LATER, AND SO ON.

3 FOR THE CITY/STATE INFORMATION, WE HAD A SCRIPT
4 THAT WOULD GO OFF TO A MAP DATABASE ON YAHOO AND
5 RETRIEVE A MAP OF THE CITY AND STATE INDICATED IN THE
6 DOCUMENT. AND ALSO ANOTHER SCRIPT WOULD GO TO THE U.S.
7 POSTAL SERVICE WEBSITE AND FIND THE ZIP CODE FOR THAT
8 CITY AND STATE.

9 Q. THE DETECTORS AND ACTIONS SCRIPTS YOU WERE JUST
10 REFERRING TO, THE ONES THAT YOU SPECIFICALLY WROTE, WAS
11 THAT WHILE YOU WERE WORKING AT APPLE?

12 A. YES, IT WAS.

13 Q. I WOULD LIKE TO SHOW YOU WHAT'S BEEN MARKED AS
14 EXHIBITS Z-15, B-16 AND F-16.

15 A. I HAVE THEM.

16 Q. DO YOU RECOGNIZE WHAT I'M SHOWING YOU MARKED AS
17 EXHIBITS Z-15, B-16, AND F-16?

18 A. YES, I DO.

19 Q. AND WHAT ARE THEY?

20 A. THESE ARE CDS THAT CONTAIN THE SOFTWARE FOR APPLE
21 DATA DETECTORS.

22 Q. HOW DO YOU KNOW THAT?

23 A. I'VE LOOKED AT COPIES OF THESE CDS PRIOR TO TODAY,
24 AND I'M FAMILIAR WITH APPLE DATA DETECTORS, SO I CAN
25 LOOK AT THE FILES AND CONFIRM THAT THOSE ARE, IN FACT,

1 THE RIGHT FILES.

2 Q. DO YOU KNOW WHERE THOSE CDS CAME FROM?

3 A. I PROVIDED THE INFORMATION ON THEM.

4 MR. SMITH: WE MOVE TO ADMIT EXHIBITS B-15, Z-16
5 AND F-16 AS FULL EXHIBITS.

6 MR. HAYES: YOUR HONOR, WE HAVE NO OBJECTION SO
7 LONG AS THEY ARE ALL THE APPLE DATA DETECTOR WITH THE
8 CLARIS EMAILER, WHICH IS THE PRIOR ART.

9 THE COURT: WITH THE WHAT?

10 MR. HAYES: CLARIS EMAILER.

11 THE COURT: CLARIS EMAILER?

12 MR. HAYES: CLARIS, THAT'S WHAT THEY ARE
13 ACCUSING.

14 MR. SMITH: I WAS GOING TO DO THIS IN TWO STEPS.
15 THIS IS THE APPLE DATA DETECTORS' SOFTWARE PART OF IT.
16 THE NEXT EXHIBIT IS GOING TO BE THE CLARIS EMAILER PART
17 OF IT.

18 THE COURT: DO YOU WANT TO OFFER THAT NOW ALSO?

19 MR. SMITH: YES.

20 THE COURT: WHY DON'T YOU FIRST ASK A FEW
21 QUESTIONS OF MR. MILLER SO THE JURY WILL KNOW WHAT IT
22 IS, AND THEN YOU CAN MOVE THEIR ADMISSION TOGETHER.

23 Q. I WOULD LIKE TO SHOW YOU, MR. MILLER, WHAT'S BEEN
24 MARKED AS EXHIBIT C-17.

25 THE COURT: DID YOU SAY C OR Z?

1 MR. SMITH: C, AS IN CRAIG.

2 A. I HAVE IT HERE.

3 Q. AND DO YOU RECOGNIZE THIS EXHIBIT?

4 A. YES, I DO. THIS IS A SET OF FLOPPY DISCS AND A CD
5 CONTAINING THE SOFTWARE FOR CLARIS EMAILER 2.0
6 VERSION 3.

7 Q. AND HOW DO YOU KNOW THAT?

8 A. I LOOKED AT PREVIOUS COPIES OF THESE.

9 MR. SMITH: AT THIS POINT WE MOVE TO ADMIT
10 EXHIBITS Z-15; B, AS IN BOY, 16; F, AS IN FRANK, 16;
11 AND C-17.

12 THE COURT: THOSE MAY BE ADMITTED AS FULL
13 EXHIBITS.

14 (DEFENDANT'S EXHIBITS Z-15, B-16, C-17, F-16
15 ADMITTED IN FULL)

16 Q. MR. MILLER, CAN YOU SHOW US HOW CLARIS EMAILER WITH
17 APPLE DATA DETECTORS WORKS?

18 A. SURE.

19 Q. AND BEFORE WE BEGIN, MAYBE JUST TO CLARIFY, I SEE
20 THAT LAPTOP COMPUTER OVER THERE. WHAT IS THAT?

21 A. THIS IS AN APPLE POWER BOOK 3400C. IT'S ACTUALLY
22 MY PERSONAL MACHINE, I BOUGHT IT FROM APPLE IN 1997.

23 Q. AND DID YOU PREPARE THAT COMPUTER FOR THE
24 PRESENTATION YOU'RE GOING TO GIVE TODAY?

25 A. YES. WHAT I DID WAS TO COMPLETELY ERASE THE HARD

1 DISC SO THERE IS NO INFORMATION ON IT AT ALL. AND THEN
2 I RELOADED THE 1997 VERSION OF THE MACINTOSH OPERATING
3 SYSTEM ONTO IT AND LOADED ALSO APPLE DATA DETECTORS AND
4 CLARIS EMAILER FROM THESE EXHIBITS.

5 Q. AND BY THESE EXHIBITS, YOU ARE REFERRING TO THE
6 ADMITTED EXHIBITS?

7 A. YES, C-17, F-16, B-16, AND Z-15.

8 Q. IS THERE A DATE THAT INDICATES THE YEAR OF THE
9 APPLE DATA DETECTORS SOFTWARE ON THE COMPUTER THAT YOU
10 HAVE?

11 A. YES, THERE ARE SEVERAL DATES HERE.

12 Q. COULD YOU JUST SHOW US THE DATE FOR APPLE DATA
13 DETECTORS?

14 A. SURE. LET ME OPEN UP THE CONTROL PANEL --

15 MR. HAYES: YOUR HONOR, THERE IS NO DISPUTE THAT
16 IT'S PRIOR ART.

17 MR. SMITH: WE CAN MOVE ON.

18 Q. IS WHAT WE'RE GOING TO SEE TODAY, MR. MILLER, HOW
19 APPLE DATA DETECTORS WOULD HAVE WORKED BACK IN 1997,
20 EARLY '98?

21 A. YES, IT IS.

22 Q. LET'S START. HOW DO APPLE DATA DETECTORS WORK?

23 A. THERE ARE THE TWO -- THE TWO PIECES THAT I REFERRED
24 TO EARLIER, THE DETECTORS AND THE ACTIONS. APPLE DATA
25 DETECTORS IS INVOKED BY THE OPERATING SYSTEM UPON A

1 REQUEST FROM THE USER AND THE TEXT FROM THE DOCUMENT
2 THAT THE USER IS WORKING WITH IS PASSED INTO APPLE DATA
3 DETECTORS, WHICH THEN APPLIES ALL OF THE DETECTORS TO
4 THAT TEXT. SO IT TAKES THE E-MAIL ADDRESS DETECTOR AND
5 HAS IT LOOK AT THE TEXT AND SEE IF IT CAN FIND ANY
6 E-MAIL ADDRESS. IT THEN TAKES THE WEBSITE ADDRESS
7 DETECTOR AND HAS IT LOOK AT THE TEXT AND SEE IF IT CAN
8 FIND ANY WEBSITES AND SO ON. IT DOES THIS FOR ALL OF
9 THE DETECTORS THAT ARE LOADED INTO THE SYSTEM.

10 AS IT DOES THAT, AS THOSE DETECTORS FIND THE
11 BITS OF INFORMATION THAT THEY ARE LOOKING FOR, IT
12 CONSTRUCTS MENUS THAT CONNECT THOSE DISCOVERED PIECES
13 OF INFORMATION WITH THE ACTIONS THAT CAN BE CARRIED OUT
14 ON THEM. SO IF IT FINDS AN E-MAIL ADDRESS, IT WILL SAY
15 -- IT WILL BUILD A MENU THAT SAYS YOU CAN SEND A
16 MESSAGE WITH THIS E-MAIL PROGRAM, SEND ONE WITH THAT
17 PROGRAM OR DO WHATEVER THE ACTION SCRIPTS FOR THAT KIND
18 OF INFORMATION, SAY.

19 Q. CAN YOU SHOW US AN EXAMPLE OF THAT WITH THE CLARIS
20 EMAILER PROGRAM.

21 A. SURE.

22 Q. AND IF YOU COULD DESCRIBE WHAT YOU ARE GOING TO
23 SHOW US, THAT WOULD BE GREAT.

24 A. SURE. LET ME BRING THE CLARIS EMAILER UP.

25 Q. I'M SORRY, BEFORE YOU BEGIN, WHAT IS THE CLARIS

1 EMAILER PROGRAM?

2 A. THIS IS A PROGRAM FOR SENDING AND RECEIVING E-MAIL.
3 SO THERE'S AN INBOX AND OUTBOX FOR YOUR MESSAGES, AND
4 THERE IS A SIMPLE WORD PROCESSOR IN THE APPLICATION TO
5 LET YOU ACTUALLY WRITE YOUR MESSAGES SO YOU CAN TYPE
6 INFORMATION IN AND DELETE IT AND CUT AND COPY AND PASTE
7 AND ALL OF THE USUAL SORTS OF WORD PROCESSING THINGS.

8 Q. AND DOES THE CLARIS EMAILER PROGRAM USE APPLE DATA
9 DETECTORS?

10 A. YES, IT DOES.

11 Q. OKAY, YOU CAN PROCEED.

12 A. SO WE HAVE CLARIS EMAILER HERE. AND LET ME BRING
13 UP THE FORM THAT I WOULD USE TO SEND A NEW MESSAGE.
14 THIS IS JUST THE STANDARD CLARIS EMAILER FORM FOR DOING
15 THIS. THERE IS A PLACE FOR THE SUBJECT IN HERE,
16 THERE'S A PLACE FOR THE RECIPIENTS OF THE MESSAGE HERE,
17 AND THEN YOU WRITE THE MESSAGE DOWN HERE.

18 Q. CAN YOU TYPE SOME TEXT IN TO DEMONSTRATE HOW APPLE
19 DATA DETECTORS WORKS?

20 A. SURE. THE KEYBOARD ON THIS MACHINE IS A LITTLE
21 STIFF. (WITNESS TYPING).

22 MR. HAYES: EXCUSE ME, JUDGE, CAN I HAVE
23 PERMISSION TO MOVE?

24 THE COURT: YES.

25 Q. MR. MILLER, IF YOU COULD JUST TELL US WHAT YOU HAVE

1 TYPED INTO THE CLARIS EMAILER?

2 A. YES, IT IS SOME TEXT. EXACTLY WHAT I TYPED IN

3 DOESN'T MATTER VERY MUCH, IT IS ACTUALLY NOT VERY

4 INTERESTING. BUT THE THING TO NOTE ABOUT IT IS THAT IT

5 DOES CONTAIN MY E-MAIL ADDRESS, JMILLER@MIRAMONTES.COM.

6 THERE IS A WEBSITE ADDRESS HERE FOR BROWN UNIVERSITY,

7 AND THEN THERE IS ALSO PROVIDENCE, RHODE ISLAND.

8 Q. SO HOW DO YOU GET THE APPLE DATA DETECTORS TO WORK?

9 A. ALL THAT YOU DO IS WITH A SINGLE CLICK OF THE RIGHT

10 MOUSE BUTTON, YOU JUST PRESS DOWN.

11 Q. WHAT HAS HAPPENED NOW THAT YOU HAVE CLICKED THE

12 MOUSE BUTTON?

13 A. THE SYSTEM HAS SENT THE TEXT IN THIS WINDOW OFF TO

14 APPLE DATA DETECTORS, WHICH HAS DONE ITS ANALYSIS AND

15 PUT ITS RESULTS INTO THIS POP-UP MENU. THE INFORMATION

16 UP HERE FROM CONTEXT SENSITIVE HELP DOWN TO DELETE

17 MESSAGE, THAT'S ALL INFORMATION THAT WAS PLACED THERE

18 BY CLARIS EMAILER ITSELF.

19 Q. SO WHAT ARE WE LOOKING AT BELOW THE DELETE MESSAGE?

20 A. WHAT YOU SEE IS -- HERE, LET ME MOVE -- HOVER IT A

21 LITTLE HIGHER ON THE SCREEN. WHAT YOU SEE ARE THE

22 THREE BITS OF INFORMATION THAT THE SYSTEM FOUND. IT

23 FOUND MY E-MAIL ADDRESS, IT FOUND THE WEBSITE ADDRESS

24 FOR BROWN UNIVERSITY AND IT FOUND PROVIDENCE, RHODE

25 ISLAND.

1 Q. DID YOU HAVE TO SELECT ANY OF THOSE SPECIFIC
2 PORTIONS OF TEXT THAT GOT RECOGNIZED IN ORDER FOR THAT
3 TO HAPPEN?

4 A. NO, I DIDN'T. I MEAN, ALL I DID WAS PRESS A SINGLE
5 MOUSE BUTTON.

6 Q. AND WHERE WAS YOUR -- WHERE WAS THE CURSOR WHEN YOU
7 HIT THE SINGLE MOUSE BUTTON, COULD YOU JUST SHOW WHERE
8 IT IS?

9 A. AS LONG AS IT IS ANYWHERE INSIDE THIS WINDOW, IT
10 WILL WORK. I CAN PUT IT, YOU KNOW, THERE, I CAN PUT IT
11 IN THE MIDDLE OF SOME OF THE TEXT, BUT IT DOESN'T
12 MATTER. IT WILL DO THE ANALYSIS NO MATTER WHERE THE
13 MOUSE IS POSITIONED.

14 Q. AND WHAT YOU ARE SHOWING -- IN EACH OF THOSE
15 POSITIONS, WERE YOU PRESSING THE MOUSE BUTTON EACH TIME
16 TO GET THAT TO APPEAR?

17 A. YES, I'M SORRY. I PRESS THE MOUSE BUTTON, NOW IT
18 COMES UP. I'LL PRESS IT AGAIN, IT COMES UP. I'LL
19 PRESS IT AGAIN. IT IS A NOISY MOUSE SO YOU CAN
20 PROBABLY HEAR IT.

21 Q. SO IF YOU DON'T HAVE TO SELECT ANY OF THE SPECIFIC
22 TEXT THAT GOT RECOGNIZED, HOW DOES APPLE DATA DETECTORS
23 KNOW WHAT'S IN THIS PARTICULAR E-MAIL?

24 A. CLARIS EMAILER SENDS THE ENTIRE CONTENTS OF THIS
25 TEXT DOCUMENT TO APPLE DATA DETECTORS FOR ANALYSIS.

1 Q. AND HOW DO YOU KNOW THAT?

2 A. WELL, YOU CAN -- YOU CAN SEE THE RESULTS.

3 MR. HAYES: OBJECTION. NO FOUNDATION.

4 THE COURT: THE QUESTION WAS ANSWERED.

5 MR. HAYES: MOVE TO STRIKE IT.

6 THE COURT: DENIED. DID YOU HEAR THE ANSWER?

7 THE ANSWER WAS "YOU CAN SEE THE RESULTS."

8 MR. HAYES: OH, OH, OKAY.

9 Q. CAN YOU DESCRIBE WHAT YOU MEAN WHEN YOU SAID, "YOU
10 CAN SEE THE RESULTS"?

11 A. YOU CAN SEE THE RESULTS OF THE ANALYSIS THAT APPLE
12 DATA DETECTORS DID BY THE APPEARANCE OF THESE THREE
13 BITS OF INFORMATION IN THE MENU.

14 Q. DID YOU NEED THE SOURCE CODE FOR APPLE DATA
15 DETECTORS OR CLARIS EMAILER TO KNOW THAT IT ANALYZED
16 THE DOCUMENT TO LOOK FOR THOSE SPECIFIC PORTIONS OF
17 TEXT THAT YOU JUST NOTED?

18 A. NO, I DON'T.

19 Q. DOES THE USER HAVE TO DO ANYTHING ELSE BESIDES THE
20 MOUSE CLICK THAT YOU DESCRIBED IN ORDER TO GET IT TO
21 RECOGNIZE THE PORTION OF THE TEXT, LIKE
22 JMILLER@MIRAMONTES.COM?

23 A. NO. IN FACT, IT'S WORTH NOTING THAT THERE IS ALL
24 SORTS OF TEXT IN THAT WINDOW. THERE IS TEXT BEFORE THE
25 PIECES OF INFORMATION THAT WERE FOUND, THERE IS TEXT

1 AFTER THE PIECES OF INFORMATION WERE FOUND. WHAT THE
2 DETECTORS WERE ABLE TO DO WAS TO WEED THROUGH ALL OF
3 THAT INFORMATION AND FIND SPECIFIC KINDS OF INFORMATION
4 THAT THEY WERE LOOKING FOR, WHETHER AN E-MAIL ADDRESS
5 OR A WEBSITE ADDRESS OR WHATEVER.

6 Q. YOU SHOWED THREE TYPES OF INFORMATION THAT WERE
7 FOUND. WHAT OTHER KINDS OF INFORMATION CAN APPLE DATA
8 DETECTORS FIND?

9 A. WE WROTE A LARGE NUMBER, A LARGE NUMBER OF
10 DIFFERENT KINDS OF DETECTORS, NAMES AND ADDRESSES,
11 STREET ADDRESSES, YOU SAW CITY, STATE, ZIP. WE CAN DO
12 TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, STOCK
13 SYMBOLS. THE KEY IS THAT THERE IS SOME WELL-STRUCTURED
14 DESCRIPTION OF THE INFORMATION THAT THE DETECTORS IS
15 LOOKING FOR THAT WE CAN BUILD INTO APPLE DATA
16 DETECTORS.

17 Q. AND BEFORE YOU HAD MENTIONED THE ACTION SCRIPTS.
18 CAN YOU SHOW US THE ACTIONS FOR EACH OF THE ELEMENTS
19 THAT WERE RECOGNIZED IN THE CLARIS EMAILER?

20 A. SURE. IF WE LOOK AT THE E-MAIL ADDRESS, THERE ARE
21 THREE, THERE IS ONE CALLED "SEND MAIL WITH CLARIS
22 EMAILER."

23 Q. WHAT DOES THAT MEAN?

24 A. THAT WOULD CREATE A BRAND NEW E-MAIL MESSAGE, A
25 FORM MUCH LIKE THE ONE THAT YOU WERE LOOKING AT, BUT

1 THIS ONE IS ADDRESSED TO JMILLER@MIRAMONTES.COM.

2 Q. AND WHAT IS THE NEXT ACTION?

3 A. SEND MAIL WITH EUDORA. EUDORA IS ANOTHER E-MAIL
4 PROGRAM, IT DOESN'T HAVE TO BE LOADED ON THE SYSTEM,
5 BUT IF IT WERE AND IF I SELECTED IT, IT WOULD DO THE
6 SAME THING AS SEND MAIL WITH CLARIS EMAILER, IT WOULD
7 LAUNCH EUDORA AND CREATE A NEW BLANK E-MAIL MESSAGE
8 WITH -- OR THAT WOULD BE ADDRESSED TO
9 JMILLER@MIRAMONTES.COM.

10 Q. AND I SEE THERE IS A THIRD ACTION, WHAT IS THAT
11 ONE?

12 A. WRITE A LETTER IS A MORE COMPLEX ONE. WHAT THIS
13 DOES IS TAKES THE E-MAIL ADDRESS AND GO INTO AN
14 ELECTRONIC ADDRESS BOOK ON THE COMPUTER AND SEE IF
15 THERE IS A PERSON IN THAT ADDRESS BOOK WHOSE E-MAIL
16 ADDRESS IS JMILLER@MIRAMONTES.COM. IF IT FINDS SUCH A
17 PERSON, IT GATHERS UP THE PERSON'S NAME, COMPANY NAME,
18 ADDRESS, CITY, STATE, ZIP AND SO ON. AND THEN TAKES
19 THAT INFORMATION OVER TO A WORD PROCESSOR, SOMETHING
20 LIKE MICROSOFT WORD, THAT OPENS A NEW WORD PROCESSING
21 DOCUMENT AND INSERTS THAT INFORMATION INTO THE DOCUMENT
22 AS IF YOU WERE ABOUT TO WRITE A LETTER TO THE PERSON.
23 SO IT WILL PUT IN TODAY'S DATE AND THEN THE PERSON'S
24 NAME AND ADDRESS AND SO ON AND SAY, DEAR: FIRST NAME.

25 Q. COULD YOU SHOW US AN EXAMPLE OF WHAT YOU'RE TALKING

1 ABOUT.

2 A. SURE. IT WILL GO BY PRETTY FAST, BUT IT WILL

3 FOLLOW THE STEPS THAT I DESCRIBED. SO I'M NOW POINTING

4 AT THE WRITE A LETTER ACTION WITH THE MOUSE AND I'M

5 GOING TO LET GO OF THE BUTTON, AND THERE IS THE ADDRESS

6 BOOK WITH MY NAME AND ADDRESS IN IT, THERE IS THE WORD

7 PROCESSOR, AND WE'VE GOT UP HERE TODAY'S DATE, WE'VE

8 GOT MY NAME AND ADDRESS AND SO ON THAT WAS RETRIEVED

9 FROM THE ADDRESS BOOK, AND THEN IT SAYS, "DEAR JIM."

10 Q. WHAT WAS THAT NAME AND ADDRESS RETRIEVED BASED ON,

11 YOUR E-MAIL ADDRESS?

12 A. YES.

13 Q. IF YOU COULD GO BACK TO WHERE YOU WERE IN CLARIS

14 EMAILER, THERE WERE SOME OTHER THINGS THAT WERE

15 RECOGNIZED. COULD YOU SHOW US THOSE AS WELL?

16 A. SURE. IF WE LOOK AT THE WEBSITE ADDRESS THERE ARE

17 A NUMBER OF ACTIONS OPEN ON AMERICA-ON-LINE OR INTERNET

18 EXPLORER OR NETSCAPE NAVIGATOR OR ANY OF THE OTHERS,

19 THOSE ARE ALL TELLING THOSE WEB BROWSERS TO OPEN UP A

20 WINDOW AND SHOW THE SELECTED WEBSITE. WE CAN'T DO

21 THOSE HERE BECAUSE THIS COMPUTER IS NOT ACTUALLY

22 CONNECTED TO THE INTERNET.

23 Q. IF IT WAS CONNECTED TO THE INTERNET, WHAT WOULD

24 HAPPEN?

25 A. YOU WOULD -- THIS WOULD OPEN INTERNET EXPLORER AND

1 YOU WOULD BE TAKEN TO WWW.BROWN.EDU, WHICH IS THE
2 WEBSITE FOR BROWN UNIVERSITY.

3 Q. THERE IS A THIRD ITEM THAT WAS RECOGNIZED,
4 "PROVIDENCE, RHODE ISLAND"?

5 A. YES.

6 Q. AND CAN YOU SHOW US WHAT ACTIONS ARE ASSOCIATED
7 WITH PROVIDENCE, RHODE ISLAND?

8 A. YES. AGAIN, YOU CAN'T RUN THESE BECAUSE THEY BOTH
9 RELY ON THE COMPUTER BEING CONNECTED TO THE INTERNET,
10 BUT GET MAP FOR U.S. CITY WOULD GO OFF TO A YAHOO WEB
11 DATABASE OF MAPS AND PULL UP A MAP FOR PROVIDENCE,
12 RHODE ISLAND. LOOK UP ZIP CODE FOR CITY, THAT'S THE
13 ONE THAT WOULD GO TO THE POST OFFICE WEBSITE AND FIND
14 THE ZIP CODE FOR THE ADDRESS OR FOR THE CITY AND STATE.

15 Q. AND HOW DOES APPLE DATA DETECTORS KNOW WHICH
16 ACTIONS ARE ASSOCIATED WITH EACH OF THOSE PIECES OF
17 INFORMATION THAT WERE RECOGNIZED, AN E-MAIL ADDRESS, A
18 CITY, A STATE, FOR EXAMPLE?

19 A. THERE IS A COMPONENT IN THE SYSTEM CALLED THE APPLE
20 DATA DETECTORS DATABASE, AND THAT MAINTAINS INFORMATION
21 ABOUT WHICH STRUCTURES HAD BEEN LOADED INTO THE SYSTEM,
22 WHICH ACTION SCRIPTS ARE LOADED INTO THE SYSTEM, AND
23 MAKES THE CONNECTIONS BETWEEN THOSE TYPES OF THINGS AND
24 WHICH OF THOSE HAVE BEEN ASKED TO BE PLACED IN USE BY
25 THE USER.

1 Q. IS THERE ANY WAY FOR US TO VISUALLY SEE THOSE
2 ASSOCIATIONS?

3 A. YES. WE CAN GO INTO THE CONTROL PANEL.

4 Q. WHAT IS THE CONTROL PANEL?

5 A. THIS IS -- IT'S A TOOL FOR APPLE DATA DETECTORS,
6 WHICH SHOWS YOU THE VARIOUS DETECTORS THAT ARE LOADED
7 INTO THE SYSTEM. AND YOU CAN SEE THAT THE E-MAIL
8 ADDRESS DETECTOR IS ON, FTP STANDS FOR FILE TRANSFER,
9 IT'S A WAY OF MOVING FILES BETWEEN COMPUTERS. HTTP IS
10 THE TECHNICAL NAME FOR A WEBSITE ADDRESS. NEWS GROUP
11 IS FOR INTERNET NEWS GROUPS, SORT OF A PRECURSOR TO
12 WEB-BASED DISCUSSION GROUPS. AND THEN THERE IS THE
13 CITY, STATE AND ZIP. IF I OPEN UP ONE OF THESE THINGS,
14 BY --

15 Q. BEFORE YOU DO THAT, COULD YOU JUST EXPLAIN WHAT THE
16 CHECKMARKS MEAN?

17 A. THAT MEANS THAT THESE DETECTORS ARE ACTIVE AND IF
18 YOU INVOKE APPLE DATA DETECTORS, YOU'LL BE LOOKING --
19 OR THEY WILL LOOK FOR INFORMATION OF THOSE TYPES.

20 Q. SO CAN YOU TURN ON AND OFF CERTAIN DETECTORS?

21 A. YES.

22 Q. YOU CAN PROCEED. WHAT WERE YOU GOING TO SHOW US?

23 A. IF I TURN THIS LITTLE TRIANGLE, IT SHOWS ME THE
24 CONTENTS OF WHAT'S HAPPENING, THE E-MAIL ADDRESS, AND
25 IT SHOWS THAT, IN FACT, THE E-MAIL ADDRESS DETECTOR IS

1 LOADED, AND THE CHECKMARK MEANS THAT IT'S TURNED ON AND
2 ACTIVE IN THE SYSTEM. AND THEN IT SAYS, ENABLE THESE
3 ACTIONS.

4 Q. WHAT DOES THAT MEAN?

5 A. THESE ARE ALL OF THE ACTION SCRIPTS THAT ARE
6 DEFINED IN THE SYSTEM AND YOU'LL RECALL THAT THE ONES
7 THAT WE SAW EARLIER WERE SEND MAIL WITH CLARIS EMAILER,
8 SEND MAIL WITH EUDORA AND WRITE A LETTER. THERE ARE
9 THESE OTHER ACTIONS THAT ARE AVAILABLE IN THE SYSTEM,
10 BUT I TURNED THEM OFF SIMPLY TO MAKE THE DEMONSTRATION
11 A LITTLE MORE CLEAR, THE MENUS WOULDN'T BE QUITE SO
12 CLUTTERED.

13 Q. FOR EXAMPLE IF YOU TURNED ONE OF THOSE ON, WOULD
14 THAT THEN APPEAR AS AN ACTION ASSOCIATED WITH THAT
15 RECOGNIZED E-MAIL STRUCTURE?

16 A. YES.

17 Q. COULD YOU SHOW US THAT?

18 A. SURE, LET ME DO SEND MAIL WITH INTERNET EXPLORER,
19 SO I'M GOING TO CHECK THAT BOX, AND IT IS NOW TURNED ON
20 SO LET ME GO UP -- CLOSE THE CONTROL PANEL. GO BACK
21 INTO CLARIS EMAILER AND IF I AGAIN PRESS THE RIGHT
22 MOUSE BUTTON TO INVOKE THE SYSTEM AND COME DOWN AND
23 LOOK AT E-MAIL ADDRESS, WE SEE THAT SEND MAIL WITH
24 INTERNET EXPLORER IS NOW INCLUDED IN THE MENUS.

25 Q. OKAY. NOW, COULD SOMEONE CREATE THEIR OWN ACTIONS

1 FOR A RECOGNIZED STRUCTURE, SUCH AS AN E-MAIL ADDRESS?

2 A. YES, THEY COULD.

3 Q. AND HOW WOULD THEY DO THAT?

4 A. THERE ARE SMALL BITS OF CODE THAT YOU HAVE TO WRITE
5 TO DEFINE AN ACTOR AND DEFINE AN ACTION SCRIPT. AND
6 APPLE ON SEVERAL OCCASIONS GAVE AWAY DOCUMENTATION IN
7 TOOLS FOR HOW ONE WOULD DO THIS.

8 Q. JUST BRIEFLY, WHAT DID THEY GIVE AWAY TO DESCRIBE
9 HOW TO DO THIS?

10 A. IN JANUARY 1997, WE PUBLISHED ON THE APPLE WEBSITE
11 AN EARLY DESCRIPTION OF APPLE DATA DETECTORS. THIS WAS
12 BEFORE THE PRODUCT WAS RELEASED; WE WANTED TO ENCOURAGE
13 PEOPLE TO FIND OUT ABOUT IT, AND ONE OF THE THINGS WE
14 PROVIDED ON THAT WEBSITE WAS AN EXAMPLE OF WHAT A
15 DETECTOR LOOKED LIKE --

16 MR. HAYES: YOUR HONOR, I'LL OBJECT, HEARSAY AND
17 IT'S NOT PART OF THE PRIOR ART THAT'S EVEN CITED BY
18 THE --

19 THE COURT: WHAT ARE YOU GETTING AT HERE,
20 MR. SMITH?

21 MR. SMITH: I JUST WANTED TO LET YOU KNOW THAT
22 THEY ARE CUSTOMIZABLE, THAT YOU CAN CHANGE THESE.

23 THE COURT: I THINK YOU HAVE ANSWERED THAT
24 QUESTION, MR. MILLER, WAIT FOR THE NEXT QUESTION.

25 Q. MR. MILLER, DO YOU HAVE ANY STAKE IN THIS

1 LITIGATION?

2 A. NO, I DON'T.

3 Q. ARE YOU BEING COMPENSATED FOR YOUR TIME TODAY?

4 A. YES, I AM.

5 Q. HOW MUCH?

6 A. \$250 AN HOUR.

7 Q. AND WHY DO YOU UNDERSTAND YOU'RE BEING COMPENSATED

8 FOR YOUR TIME?

9 A. I'M A CONSULTANT, I DON'T HAVE A SALARY JOB SO I

10 ONLY GET PAID WHEN I HAVE A CLIENT THAT I CAN BILL

11 HOURS TO, AND I'M HAPPY TO COME HERE AND HELP THE COURT

12 IN THIS MATTER, BUT I HAVE HAD TO ABANDON SEVERAL

13 PAYING CLIENTS WHO WERE WAITING FOR ME TO DO WORK FOR

14 THEM BACK IN CALIFORNIA. SO, YOU KNOW, I'M HAPPY TO

15 HELP OUT, BUT I DO NEED TO BE COMPENSATED FOR MY TIME.

16 Q. GOING BACK TO APPLE DATA DETECTORS, DID APPLE EVER

17 FILE ANY PATENTS FOR APPLE DATA DETECTORS?

18 A. YES, WE DID.

19 Q. DO YOU KNOW WHEN?

20 A. FEBRUARY 1, 1996.

21 Q. I WOULD LIKE TO SHOW YOU WHAT'S BEEN MARKED AS

22 EXHIBIT A-19.

23 A. I SEE IT HERE.

24 Q. AND WHAT IS THAT?

25 A. THAT IS THE COVER PAGE OF THE PATENT THAT WE FILED

1 IN FEBRUARY 1, 1996.

2 Q. IS THIS THE PATENT THAT YOU WERE REFERRING TO THAT
3 RELATES TO APPLE DATA DETECTORS?

4 A. YES, IT IS.

5 MR. SMITH: YOUR HONOR, WE MOVE TO ADMIT EXHIBIT
6 A-19 AS A FULL EXHIBIT.

7 MR. HAYES: NO OBJECTION.

8 THE COURT: EXHIBIT A-19 MAY BE ADMITTED AS A
9 FULL EXHIBIT.

10 (DEFENDANT'S EXHIBIT A-19 ADMITTED IN FULL)

11 MR. SMITH: AND WITH YOUR PERMISSION, I WOULD
12 LIKE TO PUBLISH AT LEAST THE FRONT FACE PAGE OF EXHIBIT
13 A-19 TO THE JURY.

14 THE COURT: I THOUGHT THAT'S ALL A-19 WAS WAS
15 THE FRONT PAGE.

16 MR. SMITH: THAT'S ALL THAT WE PUT OUT. A19 IS
17 ACTUALLY THE ENTIRE PATENT.

18 THE COURT: OKAY. ALL RIGHT.

19 Q. MR. MILLER, COULD YOU JUST POINT OUT, I BELIEVE
20 THAT ON THE SCREEN RIGHT NOW IS THE COVER OF THE PATENT
21 THAT YOU JUST DESCRIBED; IS THAT RIGHT?

22 A. YES, IT IS.

23 Q. AND ARE YOU LISTED AS AN INVENTOR ON THIS PATENT?

24 A. YES, I'M THE FIRST INVENTOR ON THE PATENT.

25 Q. AND CAN YOU -- IS THERE A DATE THAT'S LISTED THAT

1 THIS PARTICULAR PATENT WAS FILED?

2 A. YES, IT WAS FILED ON FEBRUARY 1, 1996.

3 MR. HAYES: YOUR HONOR, WE CONCEDE IT'S PRIOR
4 ART.

5 MR. SMITH: AND I ONLY HAVE TWO OTHER QUESTIONS,
6 YOUR HONOR.

7 Q. AND WHEN DID THIS PATENT ISSUE?

8 A. AUGUST 31, 1999.

9 Q. AND DID YOU HELP IN WRITING THIS PARTICULAR PATENT?

10 A. YES, I WAS THE PRIMARY TECHNICAL CONTACT FOR THE
11 CREATION OF THE PATENT. WE OBVIOUSLY HAD LAWYERS TO
12 GET IT IN THE PROPER LEGAL LANGUAGE, BUT I WAS THE ONE
13 THAT WORKED WITH THEM TO DEFINE THE CONTENT OF THE
14 PATENT.

15 MR. SMITH: THANK YOU, MR. MILLER. I HAVE NO
16 FURTHER QUESTIONS AT THIS TIME.

17 THE COURT: DO YOU PLAN TO USE THIS SCREEN,
18 MR. HAYES?

19 MR. HAYES: NO, YOUR HONOR.

20 THE COURT: WHY DON'T WE DISMANTLE THIS SCREEN
21 NOW.

22 CROSS-EXAMINATION

23 BY MR. HAYES:

24 Q. GOOD AFTERNOON, MR. MILLER.

25 A. GOOD AFTERNOON.

1 Q. NOW, IN THIS CASE YOU DID NOT FILE AN EXPERT
2 REPORT; CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND YOU WERE CALLED BY MICROSOFT AS A FACT WITNESS;
5 CORRECT?

6 A. THAT'S CORRECT.

7 Q. AND AS A FACT WITNESS, YOU ARE BEING PAID \$250 AN
8 HOUR FOR YOUR TESTIMONY; CORRECT?

9 A. I DON'T KNOW I'D USE THE WORDS BEING PAID FOR MY
10 TESTIMONY. AS I ALREADY EXPLAINED, I'VE HAD TO LEAVE
11 PAYING CLIENTS BEHIND SO I AM BEING COMPENSATED FOR MY
12 TIME.

13 Q. WELL, YOU JUST TESTIFIED THAT MICROSOFT IS PAYING
14 YOU \$250 AN HOUR FOR IT; CORRECT?

15 A. I THINK IT'S A MATTER OF WORDING. I WOULD RATHER
16 SAY THAT I'M BEING COMPENSATED FOR MY TIME.

17 Q. WELL, HOW MUCH HAVE YOU BEEN PAID TO DATE BY
18 MICROSOFT?

19 A. TO DATE, \$7,000.

20 Q. AND HOW MUCH DO THEY OWE YOU SO FAR TO DATE?

21 A. ANOTHER \$25,000, PERHAPS.

22 Q. ANOTHER \$25,000.

23 A. SOMETHING LIKE THAT.

24 Q. NOW, YOU INDICATED THAT YOU ARE FAMILIAR WITH HOW
25 APPLE DATA DETECTORS WORK?

1 A. YES.

2 Q. AND APPLE DATA DETECTORS AND CLARIS EMAIL ARE TWO
3 SEPARATE PROGRAMS; ISN'T THAT TRUE?

4 A. YES, THEY ARE.

5 Q. AND IN YOUR DEMONSTRATION YOU COMBINED THE TWO
6 SEPARATE PROGRAMS; ISN'T THAT TRUE?

7 A. BOTH PROGRAMS WERE LOADED ON TO THE COMPUTER, YES.

8 Q. SO THE ANSWER IS YES?

9 A. I DIDN'T DO ANYTHING SPECIAL TO LINK THE TWO
10 PROGRAMS OTHER THAN INSTALL CLARIS EMAILER AND THEN
11 INSTALL APPLE DATA DETECTORS.

12 Q. AND YOU DO NOT KNOW, SIR, ISN'T IT A FACT, HOW THE
13 ANALYZER SECTION WORKS IN APPLE DATA DETECTOR?

14 A. I KNOW IT AS A REASONABLE LEVEL.

15 Q. SIR, ISN'T IT A FACT YOU WERE ASKED IF YOU NEEDED
16 THE PROGRAM TO TELL YOU WHAT, AND ISN'T IT A FACT THAT
17 YOUR KNOWLEDGE FROM ALL OF THAT CAME FROM DISCUSSIONS
18 WITH OTHERS ABOUT THE PROGRAM; ISN'T THAT TRUE?

19 A. COULD I GET CLARIFICATION OF WHAT YOU ARE REFERRING
20 TO?

21 Q. YOU DID NOT WRITE THE CODE THAT IMPLEMENTED THE
22 ANALYZER SERVER; CORRECT?

23 A. NO, I DID NOT.

24 Q. AND YOU GOT THE INFORMATION FROM OTHERS WHO DID,
25 NAMELY, MR. WRIGHT, CORRECT?

1 A. THAT WAS ONE SOURCE OF INFORMATION.

2 Q. AND THAT IS THE BASIS FOR YOUR KNOWLEDGE, HEARSAY;

3 CORRECT?

4 A. NO. I DISAGREE.

5 Q. WOULD YOU TURN, IF YOU WILL --

6 MAY I APPROACH, JUDGE?

7 THE COURT: YES.

8 MR. HAYES: IF NOT, I'D RUN BACK. I'D GET

9 LOCKED UP.

10 Q. AND WHAT, SIR, IF YOU WILL TURN, IF YOU WILL, TO

11 PAGE 63, DO YOU HAVE THAT?

12 A. YES, I DO.

13 Q. AND I ASKED WHAT -- WELL, DO YOU KNOW WHAT THE CODE

14 THAT PERFORMS THAT FUNCTION LOOKS LIKE, CORRECT? READ

15 YOUR ANSWER AT LINE 7 TO THE JURY.

16 A. "NO, I DON'T KNOW WHAT THAT CODE LOOKS LIKE."

17 Q. WHAT DOES LINE 19 -- WHAT IS THE BASIS FOR YOUR

18 KNOWLEDGE, SIR?

19 READ YOUR ANSWER ON LINE 20.

20 A. "DISCUSSIONS WITH THE PROGRAMMERS AT THE TIME."

21 THE COURT: EXCUSE ME. THE BASIS FOR YOUR

22 KNOWLEDGE OF WHAT, WHAT KNOWLEDGE WERE YOU REFERRING TO

23 THERE?

24 MR. HAYES: WE'RE REFERRING HERE TO THE ANALYZER

25 SERVER, JUDGE.

1 Q. CORRECT?

2 A. YES.

3 Q. OKAY. NOW, YOU'RE NOT AWARE OF ANY VERSION WITH

4 CLARIS EMAILER AND THE APPLE DATA DETECTORS THAT WERE

5 SHIPPED; ISN'T THAT TRUE?

6 A. BOTH WERE SHIPPING PRODUCTS.

7 Q. YOU ARE NOT AWARE OF ANY -- YOU WERE NOT INVOLVED

8 WITH THE DEVELOPMENT OF CLARIS EMAILER WITH THE APPLE

9 DATA DETECTORS; CORRECT?

10 A. I WAS NOT INVOLVED IN THE DEVELOPMENT OF CLARIS

11 EMAILER. I WAS INVOLVED IN THE DEVELOPMENT OF APPLE

12 DATA DETECTORS.

13 Q. SO THE QUESTION I HAVE, SIR, ISN'T IT TRUE THAT, IN

14 FACT, YOU SHOWED A BUNCH OF MENUS UP HERE TO THE JURY;

15 RIGHT?

16 A. YES.

17 Q. AND ISN'T IT TRUE THAT AFTER YOU CLICK ON ONE OF

18 THOSE MENU ITEMS, THERE IS NO ANALYSIS FOR THE PRODUCT;

19 CORRECT?

20 A. WOULD YOU REPEAT THE QUESTION, PLEASE.

21 Q. ISN'T IT TRUE, IF YOU CLICK ON THE MENU ITEM IN THE

22 APPLE DATA DETECTOR, THERE IS NO ANALYSIS?

23 A. YES.

24 Q. AND ISN'T THAT ALSO TRUE FOR THE PRODUCT THAT'S

25 DESCRIBED IN YOUR PATENT, IF YOU CLICK ON A MENU ITEM,

1 THERE IS NO ANALYSIS?

2 A. YES, THAT'S TRUE.

3 MR. HAYES: I HAVE NO FURTHER QUESTIONS.

4 MR. SMITH: I JUST HAVE A COUPLE OF QUESTIONS.

5 REDIRECT EXAMINATION

6 BY MR. SMITH:

7 Q. HELLO, MR. MILLER.

8 A. HELLO.

9 Q. WE HEARD A NAME THAT I DON'T KNOW IF ANYONE HAD
10 HEARD BEFORE, A MR. WRIGHT?

11 A. YES.

12 Q. WHO WAS MR. WRIGHT?

13 A. HE WAS THE PROGRAMMER WHO WORKED IN MY GROUP WHO
14 WROTE THE CORE ENGINE OF THE APPLE DATA DETECTORS, THIS
15 IS THE PART THAT CALLS THE DETECTORS AND INVOKES THE --
16 THE ACTION SCRIPTS.

17 Q. AND WERE YOU HIS MANAGER?

18 A. YES, I WAS.

19 MR. SMITH: NO FURTHER QUESTIONS.

20 THE COURT: YOU MAY STEP DOWN, MR. MILLER.

21 (WITNESS EXCUSED)

22 THE COURT: IS DR. CROFT STILL IN THE COURTROOM?

23 MR. HAYES: YOUR HONOR, CAN I HAVE A COUPLE OF
24 MINUTES TO SWITCH BUNDLES AND GET ORGANIZED.

25 THE COURT: ALL RIGHT. YOU CAN HAVE A SEAT,

1 DR. CROFT, UNTIL MR. HAYES SWITCHES HIS BUNDLES.

2 MR. HAYES: THANK YOU, JUDGE.

3 THE COURT: DR. CROFT, WOULD YOU RETURN TO THE
4 STAND, PLEASE.

5 PLAINTIFF'S WITNESS, DR. BRUCE CROFT, RESUMES

6 CONTINUED DIRECT EXAMINATION

7 BY MR. SCHERKENBACH:

8 Q. WELCOME BACK, DR. CROFT. WHEN WE LEFT OFF, WE WERE
9 TALKING ABOUT YOUR INVALIDITY OPINIONS. DO YOU RECALL
10 THAT?

11 A. YES, I DO.

12 Q. FROM WHOSE VIEWPOINT DID YOU CONSIDER WHETHER ANY
13 PARTICULAR REFERENCE HAD ALL THE ELEMENTS OF THE CLAIM?

14 A. FOR THE PURPOSES OF THE INVALIDITY ANALYSIS, I HAD
15 TO CONSIDER FROM THE POINT OF VIEW OF THE PERSON OF
16 ORDINARY SKILL IN THE ART AS IT'S CALLED.

17 Q. AND WHO DID YOU CONSIDER TO BE THE PERSON OF
18 ORDINARY SKILL IN THE ART RELEVANT TO THIS CASE?

19 A. WE'VE HEARD THIS DEFINITION BEFORE; IT IS A PERSON
20 WITH A BACHELOR'S DEGREE IN COMPUTER SCIENCE AND ABOUT
21 TWO YEARS OF EXPERIENCE.

22 Q. AND HOW DID YOU TELL IF ANY PARTICULAR ELEMENT OF
23 CLAIM 1 WAS, IN FACT, DISCLOSED IN A PRIOR ART
24 REFERENCE?

25 A. BY UNDERSTANDING THE ELEMENT FIRST, AND THEN

1 CONSIDERING THE PRIOR ART. AND SEEING IF THAT ELEMENT
2 WAS EXPRESSLY IN THE PRIOR ART, IN OTHER WORDS, IF I
3 READ THE PRIOR ART, IT WAS JUST STANDING RIGHT IN FRONT
4 OF ME, I COULD SEE IT, AND IT WAS OBVIOUS. I ALSO HAD
5 TO CONSIDER WHETHER THE ELEMENT WAS INHERENT, WHAT'S
6 CALLED INHERENTLY DISCLOSED IN THE PRIOR ART.

7 Q. WHAT DO YOU MEAN BY INHERENTLY?

8 A. IT MEANS THAT IT'S SOMETHING THAT'S REQUIRED, BUT
9 IT'S NOT MENTIONED BECAUSE IT'S SO BASIC AND OBVIOUS.

10 Q. CAN YOU GIVE US AN EXAMPLE OF SOMETHING YOU THAT
11 FOUND TO BE INHERENTLY DISCLOSED IN ONE OF THE
12 REFERENCES THAT YOU RELIED ON?

13 A. YES. IF --

14 MR. HAYES: I'LL OBJECT, YOUR HONOR. NO
15 FOUNDATION. WE OUGHT TO AT LEAST KNOW WHAT REFERENCE
16 WE'RE TALKING ABOUT.

17 THE COURT: IT IS A VERY VAGUE QUESTION,
18 MR. SCHERKENBACH. I'LL SUSTAIN THE OBJECTION.

19 MR. SCHERKENBACH: WE'LL RETURN TO THAT WITH
20 REFERENCE TO A SPECIFIC EXAMPLE.

21 Q. HOW MANY PIECES, SEPARATE PIECES OF PRIOR ART DID
22 YOU RELY ON THAT YOU ARE PREPARED TO TESTIFY ABOUT HERE
23 TODAY FOR YOUR INVALIDITY ANALYSIS?

24 A. THERE IS FIVE WE'RE GOING TO DISCUSS.

25 Q. WHAT ARE THEY?

1 A. THEY ARE ADDRESSMATE, CLARIS EMAIL WITH APPLE DATA
2 DETECTORS, THERE'S THE COREL WORDPERFECT SPELLCHECKER,
3 THE COREL WORDPERFECT QUICKCORRECT FEATURE, WHICH IS
4 PART OF THE SPELLCHECKER AS WELL, AND AN IBM PATENT BY
5 AN INVENTOR CALLED LANG.

6 Q. DID YOU RELY ON ANY COMBINATIONS OF THESE PIECES OF
7 PRIOR ART IN ORDER TO CONCLUDE THAT CLAIM 1 WAS
8 INVALID?

9 A. NO, I DID NOT. EACH -- EACH PIECE OF PRIOR ART
10 ANTICIPATED THE CLAIMS.

11 Q. LET'S TALK ABOUT ADDRESSMATE. WERE YOU IN THE
12 COURTROOM WHEN MR. BLOCK DISCUSSED THE ADDRESSMATE PLUS
13 PRODUCT?

14 A. YES, I WAS.

15 Q. BASED ON ALL OF THE INFORMATION THAT YOU HAVE
16 CONSIDERED RELATING TO ADDRESSMATE PLUS, DO YOU HAVE AN
17 OPINION AS TO WHETHER ADDRESSMATE PLUS INVALIDATES
18 CLAIM 1?

19 A. YES, I DO.

20 Q. WHAT IS THAT OPINION?

21 A. I BELIEVE THAT THE ADDRESSMATE PLUS SYSTEM
22 ANTICIPATES CLAIM 1.

23 Q. AND WHAT'S THE BASIS FOR THAT OPINION?

24 A. I BELIEVE THAT THE ADDRESSMATE PLUS SYSTEM, AS
25 DESCRIBED IN THE USER MANUAL, CONTAINS ALL OF THE

1 ELEMENTS OF THE CLAIM.

2 Q. CAN YOU REMIND US WHAT ADDRESSMATE PLUS, AS
3 DESCRIBED IN THE USER MANUAL, DOES, JUST SORT OF
4 HIGHLIGHT?

5 A. WELL, AS YOU RECALL, ADDRESSMATE WAS A SYSTEM FOR
6 RETRIEVING ADDRESSES, SO WITHIN A WORD DOCUMENT, LIKE
7 SUCH AS MICROSOFT WORD, RETRIEVING ADDRESSES, SAVING
8 ADDRESSES, CORRECTING ADDRESSES. IT ALSO HAS
9 FUNCTIONALITY FOR PRINTING LETTERS AND LABELS AND
10 THINGS LIKE THAT.

11 Q. LET'S TAKE A LOOK AT THE USER MANUAL. ACTUALLY,
12 BEFORE I DO THAT, CAN I HAVE THE ELMO, PLEASE.

13 WE'RE GOING TO GO THROUGH EACH PIECE OF THE
14 CLAIM HERE, DR. CROFT, AND LET'S START WITH THE
15 PREAMBLE.

16 DOES THE -- IN YOUR OPINION DOES THE ADDRESSMATE
17 PLUS USER MANUAL DISCLOSE A COMPUTERIZED METHOD FOR
18 INFORMATION HANDLING WITHIN A DOCUMENT CREATED USING AN
19 APPLICATION PROGRAM, THE DOCUMENT INCLUDING FIRST
20 INFORMATION?

21 A. YES, IT DOES. WE SAW EXAMPLES OF A MICROSOFT WORD
22 DOCUMENT AND THE ADDRESSMATE TOOL MANIPULATING THE
23 CONTENTS OF THAT WORD DOCUMENT, ADDING ADDRESSES,
24 SAVING ADDRESSES. AND SOME OF THOSE THINGS I CONSIDER
25 FIRST INFORMATION.

1 Q. DID YOU SEE ANYTHING IN THE USER MANUAL THAT HELPED
2 YOU REACH YOUR CONCLUSION WITH RESPECT TO THE PREAMBLE?

3 A. YES, IT'S IN THE INTRODUCTORY SECTION OF THE USER
4 MANUAL.

5 Q. LET'S TAKE A LOOK AT THAT.

6 MR. SCHERKENBACH: YOUR HONOR, THIS IS -- THE
7 USER MANUAL IS EXHIBIT X-15 IN EVIDENCE. SO WITH YOUR
8 PERMISSION, I WOULD LIKE THE JURY TO SEE THIS AS WE GO
9 THROUGH.

10 Q. DO YOU RECOGNIZE WHAT'S ON THE SCREEN HERE,
11 DR. CROFT?

12 A. YES, THIS IS ONE OF THE INTERNAL PAGES OF THE
13 MANUAL THAT -- I'VE SEEN THAT PAGE BEFORE.

14 Q. IS ADDRESSMATE DESIGNED TO WORK WITH ANY PARTICULAR
15 TYPES OF PROGRAMS?

16 A. IT'S DESIGNED TO WORK WITH A RANGE OF
17 WORD-PROCESSING PROGRAMS, AS WE WERE TOLD YESTERDAY.
18 MICROSOFT WORD WAS THE EXAMPLE. ACTUALLY, I THINK HE
19 WAS USING WORD PERFECT AS THE EXAMPLE, BUT MICROSOFT
20 WORD IS ALSO A SYSTEM IT CAN WORK WITH IT. AND HE
21 MENTIONED AMATE SYSTEM, FOR EXAMPLE, SO IT CAN WORK
22 WITH DIFFERENT SYSTEMS.

23 Q. IS THERE ANYTHING IN THE MANUAL THAT RELATES TO THE
24 SORTS OF PROGRAMS THAT ADDRESSMATE WILL WORK WITH?

25 A. WELL, CHAPTER 5 ADDRESSES HOW TO INSTALL

1 ADDRESSMATE WITH ONE OF A RANGE OF WORD PROCESSORS,
2 WHICHEVER WORD PROCESSOR YOU'RE CURRENTLY USING.

3 Q. DOES THE MANUAL ACTUALLY SPECIFICALLY MENTION
4 MICROSOFT WORD AS ONE OF THE WORD PROCESSORS YOU CAN
5 USE ADDRESSMATE WITH?

6 A. YES, IT DOES. YOU CAN SEE THE ONE THAT REFERS TO
7 PAGE 36 SAYS FOR "WORD FOR WINDOWS USERS".

8 Q. LET'S GO ON TO THE NEXT ELEMENT. COULD I HAVE THE
9 ELMO, PLEASE.

10 PROVIDING A RECORD RETRIEVAL PROGRAM; DO YOU SEE
11 THAT ELEMENT?

12 A. YES, I DO.

13 Q. IS THAT PRESENT OR DISCLOSED IN THE USER MANUAL FOR
14 ADDRESSMATE PLUS?

15 A. YES, IT IS.

16 Q. FIRST OF ALL, WHAT IS A RECORD RETRIEVAL PROGRAM?

17 A. A RECORD RETRIEVAL PROGRAM IS A PROGRAM THAT'S
18 DESIGNED TO RETRIEVE RECORDS FROM AN INFORMATION
19 SOURCE.

20 THE COURT: WE'RE GOING TO HAVE TO STOP THERE,
21 MR. SCHERKENBACH. WE'LL TAKE OUR LUNCHEON RECESS NOW.
22 RESUME AT 2:00 O'CLOCK.

23 (JURY EXCUSED)

24 THE COURT: YOU MAY STEP DOWN, DR. CROFT. COURT
25 WILL BE IN RECESS.

1 (LUNCH 12:30 P.M. TO 2:00 P.M.)

2 THE COURT: BRING THE JURY IN, PLEASE.

3 (JURY PRESENT)

4 THE COURT: PLEASE BE SEATED, LADIES AND
5 GENTLEMEN.

6 BEFORE WE RESUME WITH DR. CROFT'S TESTIMONY, I
7 JUST WANTED TO MENTION A FEW SCHEDULING MATTERS. ON
8 FRIDAY I HAVE SOME CRIMINAL CASES THAT I'M GOING TO
9 HAVE TO DEAL WITH, SO YOU WON'T SIT ON FRIDAY. WE
10 EXPECT THAT THE EVIDENCE, AT LEAST IN THIS PHASE OF THE
11 CASE, WILL BE COMPLETED EITHER SOME TIME TOMORROW OR
12 MONDAY, AND THAT MEANS THAT YOU WILL HEAR THE FINAL
13 ARGUMENTS AND I WILL CHARGE YOU ON THE LAW EITHER ON
14 MONDAY OR TUESDAY, DEPENDING ON HOW THESE OTHER THINGS
15 HAPPEN. I THOUGHT YOU MIGHT WANT TO KNOW THAT AS FAR
16 AS MAKING YOUR PLANS, AND I'LL KEEP YOU POSTED WITH ANY
17 UPDATES IF THESE THINGS CHANGE.

18 ALL RIGHT, MR. SCHERKENBACH.

19 MR. SCHERKENBACH: THANK YOU, YOUR HONOR.

20 Q. DR. CROFT, WHEN WE LEFT OFF YOU WERE TELLING US
21 WHAT THE RECORD RETRIEVAL PROGRAM IS TO YOUR
22 UNDERSTANDING. CAN YOU TELL US THAT, PLEASE?

23 A. YES, I CAN. AS THE NAME SUGGESTS, IT IS A PROGRAM
24 THAT'S DESIGNED TO RETRIEVE RECORDS FROM THE
25 INFORMATION SOURCE OR IT CAN BE PART OF THE PROGRAM AS

1 WELL, AND THE INFORMATION SOURCE IS SOMETHING LIKE A
2 DATABASE OR A FILE OR A DICTIONARY, SOMETHING LIKE
3 THAT.

4 Q. IS IT YOUR UNDERSTANDING THAT IN CLAIM 1 THE RECORD
5 RETRIEVAL PROGRAM HAS TO BE A SEPARATE OR STAND-ALONE
6 PROGRAM FROM THE WORD PROCESSOR, SAY?

7 MR. HAYES: OBJECTION, LEADING.

8 THE COURT: OVERRULED. YOU MAY ANSWER.

9 A. THE PATENT DOESN'T SAY ANYTHING ABOUT A RECORD
10 RETRIEVAL PROGRAM APART FROM MENTIONING THE NAME IN THE
11 CLAIM AND SOME OF THE TEXT, SO IT DOESN'T REALLY LIMIT
12 WHAT A RECORD RETRIEVAL PROGRAM IS. SO IT IS PERFECTLY
13 REASONABLE FOR A PART OF IT THAT WE TALKED ABOUT, MR.
14 KLAUSNER TALKED ABOUT SUBROUTINES, PROGRAMS THAT MAKE
15 UP OTHER PROGRAMS, PROGRAMS CALL OTHER PROGRAMS. ONE
16 OF THOSE PROGRAMS IS CALLED BY ANOTHER PROGRAM COULD BE
17 A RECORD RETRIEVAL PROGRAM. IT DOESN'T HAVE TO BE A
18 STAND-ALONE PROGRAM.

19 Q. DOES THE ADDRESSPLUS USER MANUAL DISCLOSE A RECORD
20 RETRIEVAL PROGRAM?

21 A. YES, IT DOES. IT -- THE MANUAL TALKS ABOUT THE
22 PART OF ADDRESSMATE WHICH LOOKS UP THE ZIP+4 CD TO FIND
23 INFORMATION RELATED TO AN ADDRESS.

24 Q. I'VE PUT ON THE SCREEN PAGE 6-46 FROM --

25 THE COURT: JUST A MOMENT, MR. SCHERKENBACH, I

1 GUESS WE HAVE PROBLEMS WITH THE COURT REPORTER'S
2 COMPUTER. WE'RE GOING TO HAVE TO CHECK TO SEE.

3 (PAUSE)

4 Q. ALL RIGHT. SO I WAS SAYING THAT I PUT UP PAGE 6-46
5 FROM THE ADDRESSMATE MANUAL, EXHIBIT X-15. IS THERE
6 ANYTHING ON THIS PAGE THAT RELATES TO RECORD RETRIEVAL
7 PROGRAM?

8 A. WELL, THIS IS TALKING ABOUT ONE OF THE FUNCTIONS
9 THAT MAKE USE OF THE -- OF THE ADDRESS CORRECTION
10 CAPABILITY OF ADDRESSMATE. AND IN PARTICULAR, THERE'S
11 A SECTION THERE, IT SAYS THAT ADDRESSES THAT YOU
12 CHECKED ARE COMPARED AGAINST THE ADDRESSES ON THE ZIP+4
13 ADDRESS DIRECTORY CD, WHICH IS INCLUDED WITH
14 ADDRESSMATE PLUS. AND IF ADDRESSMATE PLUS CAN LOCATE
15 THE SPECIFIED ADDRESS ON THE CD, THE PROGRAM
16 AUTOMATICALLY CORRECTS THE ADDRESS IN THE WORD
17 PROCESSOR DOCUMENT.

18 SO IT IS DESCRIBING A PROCESS OF GOING TO A
19 DATABASE, ZIP+4 DATABASE, AND RETRIEVING THE CORRECT
20 ADDRESS INFORMATION THERE THAT CORRESPONDS TO THE
21 INITIAL SEARCH.

22 Q. NOW, DR. CROFT, AS WE GO THROUGH THE VARIOUS
23 ELEMENTS OF THE CLAIMS, DID YOU PREPARE A CHART THAT
24 ALLOWS US TO KEEP TRACK OF WHAT YOUR OPINIONS ARE?

25 A. YES, I DID, A CHART WHICH HAS LISTED VARIOUS CLAIMS

1 AND VARIOUS TYPES OF PRIOR ART.

2 Q. WE'LL SEE IF WE CAN PUT THAT UP ON YOUR SCREEN
3 HERE.

4 DO YOU SEE WHAT'S ON YOUR SCREEN, NOT YET ON THE
5 JURY'S SCREEN?

6 A. YES, IT'S A DESCRIPTION OF CLAIM 1 ON THE
7 LEFT-HAND, SIDE AND ON THE RIGHT-HAND SIDE IS THE
8 COLUMNS REPRESENTING THE VARIOUS PIECES OF PRIOR ART
9 THAT WE'RE GOING TO TALK ABOUT, WITH A CHECK BOX
10 AGAINST EACH CLAIM LIMITATION.

11 MR. SCHERKENBACH: YOUR HONOR, WITH YOUR
12 PERMISSION, MAY WE SHOW THIS TO THE JURY.

13 MR. HAYES: AS A DEMONSTRATIVE, RIGHT?

14 MR. SCHERKENBACH: AS A DEMONSTRATIVE, YES.

15 MR. HAYES: NO OBJECTION.

16 Q. AND DR. CROFT, WE'RE HERE IN THE COLUMN TALKING
17 ABOUT ADDRESSMATE. I BELIEVE YOU JUST TALKED ABOUT A
18 RECORD RETRIEVAL PROGRAM. IS IT APPROPRIATE IN YOUR
19 OPINION TO CHECK THE BOX INDICATING THAT ADDRESSMATE
20 PLUS HAS A RECORD RETRIEVAL PROGRAM?

21 A. ABSOLUTELY. IT'S A PART OF THE PROGRAM THAT
22 ACCESSES THE ZIP+4 DATABASE.

23 Q. ALL RIGHT, WE'LL CHECK THAT ONE. HOW ABOUT THE
24 INPUT DEVICE LIMITATION OF CLAIM 1, DOES ADDRESSMATE
25 PLUS DISCLOSE USING AN INPUT DEVICE?

1 A. THE MANUAL TALKS ABOUT PROVIDING -- ADDRESSMATE
2 PROVIDING A MENU IN THE WORD PROCESSOR SUCH AS
3 MICROSOFT WORD, OR, IN FACT, YOU CAN ACTUALLY PUT A
4 BUTTON ON THE TOOL BAR AT THE TOP OF THE WORD
5 PROCESSOR. SO YOU CAN EITHER DO A MENU SELECTION TO
6 START AN ADDRESSMATE FUNCTION, LIKE THE SAVE ADDRESS OR
7 RETRIEVE ADDRESS FUNCTION, OR YOU CAN CLICK A BUTTON
8 CORRESPONDING TO THAT AS WELL. SO, YES, IT DOES
9 PROVIDE AN INPUT DEVICE.

10 Q. CAN YOU SHOW US IN THE MANUAL WHERE IT TALKS ABOUT
11 AN INPUT DEVICE?

12 A. WELL, THIS IS A PART THAT'S JUST BEEN BLOWN UP
13 THERE. ONCE YOU LOAD THE APPROPRIATE FILE, YOU CAN
14 CHOOSE ADDRESSMATE MACRO COMMANDS FROM THE AMATE MENU
15 IN THE WORD FOR WINDOW'S MENU BAR, AND YOU SAW THAT IN
16 THE DEMONSTRATION YESTERDAY. YOU CAN ALSO ASSIGN
17 ADDRESSMATE MACROS TO BUTTONS ON THE WEB FOR WINDOWS
18 TOOLBAR.

19 Q. SO IF WE GO BACK TO THE CHART HERE AND WE CHECK OFF
20 THE INPUT DEVICE LIMITATION FROM ADDRESSMATE PLUS?

21 A. YES.

22 Q. HOW ABOUT THE NEXT LIMITATION, UPON A SINGLE ENTRY
23 OF THE EXECUTE COMMAND BY MEANS OF THE INPUT DEVICE, IS
24 THAT PRESENT IN ADDRESSMATE PLUS?

25 A. YES, IT IS. WHEN YOU CHOOSE A MENU SELECTION, ONE

1 OF THOSE FUNCTIONS FOR ADDRESSMATE FROM THE ADDRESSMATE
2 MENU OR A BUTTON, IF YOU PUT IT THAT WAY, THEN THAT
3 STARTS THE WHOLE PROCESS OF -- LET'S FOCUS ON THE SAVE
4 ADDRESS ONE, IT TAKES AN ADDRESS AND ALL THE OTHER
5 STEPS THAT ARE GOING TO BE REQUIRED THAT WE'LL TALK
6 ABOUT, BUT JUST THAT SINGLE CLICK ON THE BUTTON OR A
7 SINGLE CLICK OF THE -- OR AN EXECUTE OF ONE OF THE MENU
8 OPTIONS UNDER THE ADDRESSMATE MENU, STARTS THE WHOLE
9 PROCESS AUTOMATICALLY.

10 Q. IS THERE A SPOT IN THE MANUAL THAT REFERS TO SIMPLY
11 CLICKING ON A BUTTON?

12 A. YES, THERE IS.

13 Q. LET'S SEE IF WE CAN PUT THAT UP. PAGE 5-39 OF
14 EXHIBIT X-15, YOUR HONOR, THIS IS IN EVIDENCE. IF WE
15 COULD HAVE THE JURY SEE IT, PLEASE.

16 A. THIS IS JUST LIKE THE NEXT PAGE OR THE LAST ONE WE
17 SAW. AND IT'S JUST SAYING THAT ON NUMBER 9 THERE YOU
18 CAN NOW SIMPLY CLICK THE BUTTON YOU DEFINED TO EXECUTE
19 AN ADDRESSMATE MACRO. SO A SINGLE CLICK ON A BUTTON
20 AND THEN THE FUNCTION, LIKE, SAVE ADDRESS, JUST STOPS
21 AUTOMATICALLY.

22 Q. DOES THE SINGLE ENTRY OF THE EXECUTE COMMAND IN
23 ADDRESSMATE PLUS REQUIRE THE USER TO SELECT THE TEXT IN
24 ANY WAY?

25 A. NO, IT DOES NOT. WE SAW THAT IN THE DEMONSTRATION,

1 TOO, BUT IT SIMPLY -- FROM ANYWHERE IN THE DOCUMENT, NO
2 MATTER WHERE THE CURSOR IS, YOU CAN JUST CHOOSE THAT
3 FUNCTION FOR A FUNCTION LIKE SAVE ADDRESS AND IT WILL
4 START THE PROCESS OF DETECTING THE ADDRESS.

5 Q. IS THERE A PORTION OF THE MANUAL THAT YOU RELIED ON
6 IN ARRIVING AT THAT OPINION?

7 A. YES, THERE IS. IT'S UNDER THE SAVE ADDRESS
8 DESCRIPTION.

9 Q. WE'VE PUT UP NOW 6-47 OF THE MANUAL. IS THAT THE
10 PAGE YOU HAVE IN MIND?

11 A. I BELIEVE IT IS, YES. SO THIS IS DESCRIBING THE
12 SAVING AN ADDRESS TO THE ADDRESSMATE DATABASE WHICH IS
13 THE SAVE ADDRESS FUNCTION ON THAT -- THE MENU THAT YOU
14 SAW. IF YOU MANUALLY ENTER AN ADDRESS IN THE LETTER,
15 YOU CAN AUTOMATICALLY TRANSFER THE ADDRESS TO
16 ADDRESSMATE AND SAVE IT IN THE ADDRESSMATE DATABASE.

17 AND TO SAVE AN ADDRESS IN THE ADDRESSMATE
18 DATABASE, CHOOSE THE AMATE SAVE ADDRESS COMMAND, A
19 BEEP, WHICH WE HAD TROUBLE HEARING YESTERDAY, SOUNDS TO
20 TELL YOU THAT THE ADDRESS WAS SAVED IN THE ADDRESSMATE
21 DATABASE.

22 Q. SO, AGAIN, IN THE CASE OF THE SAVE ADDRESS ACTION
23 IN ADDRESSMATE, DOES THE SINGLE ENTRY OF THE EXECUTE
24 COMMAND REQUIRE THE CURSOR OR THE MOUSE TO BE IN ANY
25 PARTICULAR LOCATION?

1 A. IT DOES NOT.

2 Q. LET ME GO BACK TO THE CLAIM CHART, PLEASE.

3 IS IT APPROPRIATE IN YOUR OPINION TO CHECK OFF
4 THE BOX RELATING TO THE SINGLE ENTRY OF THE EXECUTE
5 COMMAND FOR ADDRESSMATE?

6 A. YES, IT IS.

7 Q. LET'S GO ON TO THE NEXT ONE, THE ANALYSIS STEP,
8 ANALYZING THE DOCUMENT TO DETERMINE IF THE FIRST
9 INFORMATION IS CONTAINED THEREIN. DOES THE USER MANUAL
10 FOR ADDRESSMATE PLUS DISCLOSE THIS ELEMENT?

11 A. YES, IT TALKS ABOUT AUTOMATICALLY DETECTING
12 ADDRESSES AND HOW THAT'S A FEATURE OF ADDRESSMATE.

13 Q. LET'S TAKE A LOOK AT PAGE 6-47 FROM THE USER
14 MANUAL. WHAT, IF ANYTHING, ON THIS PAGE RELATES TO
15 YOUR ANALYSIS OF THE ANALYZING ELEMENT OF CLAIM 1?

16 A. WELL, WE JUST LOOKED AT THIS ABOUT -- THIS
17 DESCRIPTION TO SAVE ADDRESS FUNCTION, AND IT'S SAYING
18 THAT AFTER YOU HAVE MANUALLY ENTERED THE ADDRESS IN THE
19 LETTER, YOU CAN SIMPLY -- YOU CAN AUTOMATICALLY
20 TRANSFER IT WHEN YOU INVOKE THIS FUNCTION AND SAVE IT
21 IN THE ADDRESSMATE DATABASE.

22 Q. SO IN THE ADDRESSMATE PLUS PRODUCT, USER MANUAL
23 THAT YOU RELY ON, WHAT IS THE FIRST INFORMATION?

24 A. THE FIRST INFORMATION IS THE -- IF WE TALK ABOUT
25 THE SAVE ADDRESS FUNCTION, THE FIRST INFORMATION IS THE

1 ADDRESS THAT IT'S DETECTED IN THE DOCUMENT
2 AUTOMATICALLY.

3 Q. CAN WE GO BACK TO OUR CLAIM CHART, PLEASE.

4 IS IT APPROPRIATE IN YOUR OPINION TO CHECK OFF
5 THE BOX FOR ADDRESSMATE PLUS RELATING TO THE ANALYZING
6 STEP?

7 A. IT IS.

8 Q. NOW, THE NEXT STEP SAYS, IF THE FIRST INFORMATION
9 IS CONTAINED IN THE DOCUMENT, SEARCHING AND SO FORTH,
10 SEARCHING FOR THE SECOND INFORMATION. DID YOU FIND
11 THAT IN THE ADDRESSMATE PLUS USER MANUAL?

12 A. YES, I DID. WITH THE -- WITH THE SAVE ADDRESS
13 FUNCTION, WHICH AUTOMATICALLY DETECTS THE ADDRESS IN
14 THE DOCUMENT AND SAVES IT TO AN ADDRESS, THE MANUAL
15 DESCRIBES AN OPTION, WHICH IS AUTOMATICALLY CORRECTING
16 ANY ADDRESS THAT'S SAVED, AUTOMATICALLY CHECKING AND
17 CORRECTING ANY ADDRESS IT'S SAVED INTO THE DATABASE.
18 AND THAT OPTION, AS DESCRIBED IN THE MANUAL, WHEN AN
19 ADDRESS IS SAVED INTO THE DATABASE WILL BE TO THE ZIP+4
20 DATABASE AND CHECK THE ZIP CODE AND STATE ABBREVIATIONS
21 AND THINGS LIKE THAT TO MAKE SURE THAT THEY ARE POSTAL
22 SERVICE COMPLIANT.

23 Q. ALL RIGHT. I'VE PUT UP ON YOUR SCREEN PAGE 11-153
24 FROM THE USER MANUAL, WHICH IS EXHIBIT X-15. IS THERE
25 ANYTHING ON THIS PAGE THAT YOU RELIED ON IN ARRIVING AT

1 YOUR CONCLUSION THAT ADDRESSMATE PLUS SHOWS THE
2 SEARCHING ELEMENT OF CLAIM 1?

3 A. YES, I DID. YOU CAN USE -- THAT THIS SECTION OF --
4 ENABLING AUTO CORRECTION OF SAVED ADDRESSES -- I'M
5 SORRY.

6 THIS SECTION ON ENABLING AUTO CORRECTION OF
7 SAVED ADDRESSES, I DESCRIBED THAT TO YOU AS AN OPTION
8 THAT HAS TO BE SET AND YOU SAW THAT OPTION BEING SET
9 YESTERDAY AS WELL. THE SECTION SAYS YOU CAN USE THE
10 ENABLE AUTO CORRECTION OF SAVED ADDRESSES OPTION TO
11 AUTOMATICALLY CHECK AND CORRECT NEW ADDRESSES EACH TIME
12 YOU SAVE INTO THE ADDRESSMATE PLUS DATABASE. IF YOU
13 ENTER AN INCORRECT ADDRESS WHILE THIS OPTION IS ACTIVE
14 AND THEN TRY TO SAVE THE ADDRESS TO THE ADDRESSMATE
15 PLUS DATABASE, ADDRESSMATE PLUS WILL ATTEMPT TO
16 AUTOMATICALLY CORRECT THE ADDRESS.

17 Q. IF YOU CAN SLOW DOWN -- I KNOW IT'S HARD, BUT SLOW
18 DOWN A LITTLE BIT MORE FOR THE COURT REPORTER, OKAY.
19 THANK YOU.

20 CAN WE GO BACK TO OUR CLAIM CHART, PLEASE.

21 JUST BEFORE WE TALKED ABOUT WHETHER WE CAN CHECK
22 THE BOX HERE, WHAT -- THIS SEARCHING LIMITATION REFERS
23 TO AN INFORMATION SOURCE. DO YOU SEE WHERE MY CURSOR
24 IS, INFORMATION SOURCE?

25 A. YES, I DO.

1 Q. WHAT IS THE INFORMATION SOURCE IN ADDRESSMATE PLUS?

2 A. THE INFORMATION SOURCE IS THE ZIP+4 CD.

3 Q. AND WHAT IS THE SECOND INFORMATION IN ADDRESSMATE

4 PLUS?

5 A. THE SECOND INFORMATION IS THE CORRECT ADDRESS

6 INFORMATION, THAT YOU TAKE AN ADDRESS, YOU LOOK IT UP

7 ON THE ZIP+4 DATABASE AND YOU FIND THE CORRECT ADDRESS

8 WITH THE EXTRA NUMBERS IN THE ZIP CODE AND MAYBE A

9 CORRECTION OF THE STATE NAME AND THINGS LIKE THAT.

10 Q. SO IS IT APPROPRIATE IN YOUR OPINION TO CHECK OFF

11 THE BOX HERE FOR ADDRESSMATE PLUS FOR THE SEARCHING

12 LIMITATION?

13 A. YES, IT IS.

14 Q. LET'S GO ON TO THE LAST ONE. WHEN THE INFORMATION

15 SOURCE INCLUDES SECOND INFORMATION ASSOCIATED WITH THE

16 FIRST INFORMATION PERFORMING AT LEAST ONE OF THESE

17 THREE STEPS. DID YOU FIND THAT DISCLOSED IN THE

18 ADDRESSMATE PLUS USER MENU?

19 A. YES, I DID. THE USER MANUAL TALKS ABOUT, AS WE

20 JUST SAW, THAT WHEN YOU HAVE THIS OPTION SET TO

21 AUTOMATICALLY CHECK ADDRESSES WHICH ARE SAVED IN THE

22 DATABASE, THEN IT WILL AUTOMATICALLY CHECK THEM, CHECK

23 AND CORRECT THEM AND THE SAVE ADDRESS FUNCTION

24 AUTOMATICALLY DETECTS AN ADDRESS, WANTS TO SAVE IT INTO

25 THE DATABASE THAT'S CHECKED; IF IT'S INCORRECT, THE

1 ADDRESS IS CORRECTED AND CORRECTED IN THE DOCUMENT.

2 Q. I'M SHOWING YOU PAGE 11-150 OF THE MANUAL, WHICH IS
3 EXHIBIT X-15. IS THERE ANYTHING ON THIS PAGE THAT YOU
4 RELIED ON IN ARRIVING AT YOUR CONCLUSION THAT
5 ADDRESSMATE PLUS SATISFIES THE LAST ELEMENT OF CLAIM 1?

6 A. THIS IS A SUMMARY OF THE -- WHAT YOU CAN DO WITH
7 THE ADDRESS CORRECTION FEATURES OF ADDRESSMATE. IT
8 CORRECTS ADDRESSES IN MANY WAYS. YOU CAN USE
9 ADDRESSMATE PLUS TO CORRECT, AND IF WE GO DOWN TO THE
10 FIFTH ONE, IT SAYS AN ADDRESS WITHIN YOUR WORD
11 PROCESSOR.

12 Q. AND DOES ADDRESSMATE PLUS, THE USER MANUAL,
13 DISCLOSE DISPLAYING THE SECOND INFORMATION?

14 A. IT DOES PUT THE ADDRESSMATE DATABASE WITH THE
15 CORRECTED INFORMATION IN A WINDOW ON THE SCREEN, BUT
16 IT'S BEHIND THE OTHER WINDOW.

17 Q. DID YOU FIND A REFERENCE TO THAT IN THE USER
18 MANUAL?

19 A. YES, I DID.

20 Q. I'M SHOWING YOU PAGE 11-153 FROM THE USER MANUAL
21 WHICH IS EXHIBIT X-15. CAN YOU POINT OUT TO US THE
22 REFERENCE THAT YOU RELY ON?

23 A. WELL, THIS IS ONE YOU'VE SEEN BEFORE THAT YOU
24 AUTOMATICALLY CHECK AND CORRECT NEW ADDRESSES EACH TIME
25 YOU SAVE THEM TO THE ADDRESSMATE PLUS DATABASE. AND AS

1 IT SAYS, IF YOU TRY AND SAVE THE ADDRESS TO THE
2 ADDRESSMATE PLUS DATABASE, ADDRESSMATE PLUS WILL
3 AUTOMATICALLY CORRECT THE ADDRESS. AND IT DOESN'T
4 ACTUALLY SAY IT HERE, BUT IT ACTUALLY PUTS THAT IN A
5 WINDOW ON THE SCREEN AS WELL.

6 Q. COULD WE GO BACK TO THE CLAIM CHART, PLEASE.

7 IS IT APPROPRIATE, THEN, IN YOUR OPINION,
8 DR. CROFT, TO CHECK OFF THE LAST BOX HERE FOR
9 ADDRESSMATE PLUS CORRESPONDING TO THE LAST ELEMENT OF
10 CLAIM 1?

11 A. YES, IT IS, BASED ON -- YOU TAKE AN ADDRESS IN THE
12 DOCUMENT, YOU SAVE IT, IT AUTOMATICALLY CHECKS IT,
13 FIXES IT UP; AND SO I'M CONSIDERING THAT AS EITHER
14 INSERTING THE FIRST INFORMATION IN THE DOCUMENT, THE
15 CORRECT ADDRESS, OR YOU'RE JUST COMPLETING THE FIRST
16 INFORMATION, TOO, CERTAINLY ONE OF THOSE TWO.

17 Q. LET'S TALK ABOUT CLARIS EMAILER WITH APPLE DATA
18 DETECTORS. WERE YOU IN THE COURTROOM WHEN MR. MILLER
19 DISCUSSED THAT PRODUCT?

20 A. YES, I WAS.

21 Q. AND BASED ON YOUR UNDERSTANDING OF THE SOFTWARE AND
22 HOW IT WORKS AND WHAT MR. MILLER TESTIFIED ABOUT, DO
23 YOU HAVE AN OPINION AS TO WHETHER THE CLARIS EMAILER
24 PRODUCT WITH APPLE DATA DETECTORS INVALIDATES CLAIM 1?

25 A. YES, IT IS MY OPINION THAT CLARIS EMAILER WITH THE

1 APPLE DATA DETECTORS INVALIDATES CLAIM 1.

2 Q. JUST LEAVING THE CHART UP ON THE SCREEN HERE FOR A
3 MINUTE. REFERRING TO THE PREAMBLE, HOW DOES THAT APPLY
4 TO THE CLARIS EMAILER PRODUCT WITH APPLE DATA
5 DETECTORS?

6 A. WELL, AGAIN, YOU ARE IN AN E-MAIL DOCUMENT AND YOU
7 ARE HANDLING THE INFORMATION IN THAT DOCUMENT, AND WHAT
8 THE APPLE DATA DETECTORS DOES IS TO DETECT INFORMATION
9 IN THAT DOCUMENT AND GIVE YOU THE POSSIBILITY OF
10 INSERTING OTHER INFORMATION, FINDING RELATED
11 INFORMATION, ETC. SO, YES, I THINK THAT IT'S CLEAR
12 THAT WE SATISFIED THE PREAMBLE.

13 Q. AND WHAT IN THE APPLE DATA DETECTORS PRODUCT IS
14 USED WITH CLARIS EMAILER, IS THE RECORD RETRIEVAL
15 PROGRAM IN THE FIRST ELEMENT OF CLAIM 1?

16 A. MY ANALYSIS OF THE RECORD RETRIEVAL PROGRAM IS THE
17 PART OF THE CODE THAT GOES TO THE APPLE DATA DETECTORS'
18 DATABASE TO GET THE ASSOCIATIONS OF -- TO FIND THE
19 RELATED ACTIONS FOR A GIVEN RECOGNIZED SMART TAG (SIC).
20 ONE OF THE THINGS IT HAS TO DO, ONCE IT HAS RECOGNIZED
21 -- I SAID SMART TAG, I DIDN'T MEAN THAT -- ONCE IT'S
22 FOUND AN INTERESTING PIECE OF INFORMATION, IT HAS TO --
23 AND RECOGNIZED IT, IT HAS TO WORK OUT WHAT THE
24 ASSOCIATED ACTIONS ARE, IT HAS TO GO TO THIS APPLE DATA
25 DETECTORS' DATABASE THAT DR. MILLER REFERRED TO, AND

1 THAT REQUIRES A RECORD RETRIEVAL PROGRAM.

2 Q. IS IT APPROPRIATE, THEN, TO CHECK OFF THE BOX FOR

3 RECORD RETRIEVAL FOR THE APPLE DATA DETECTORS -- THE

4 CLARIS EMAILER PRODUCT WITH APPLE DATA DETECTORS?

5 A. YES, IT IS.

6 Q. AND BY THE WAY, JUST GOING FORWARD TO GIVE THE

7 REPORTER AND EVERYONE ELSE A BREAK, IF I REFER TO THIS

8 CLARIS EMAILER, WOULD YOU UNDERSTAND THAT TO MEAN

9 CLARIS EMAILER WITH APPLE DATA DETECTORS?

10 A. OKAY.

11 Q. ALL RIGHT. HOW ABOUT THE INPUT DEVICE, WHAT IS

12 THAT IN THE CLARIS EMAILER PRODUCT?

13 A. AS WE SAW IN THE DEMONSTRATION THAT JUST TOOK

14 PLACE, THERE IS -- ALL THAT IS REQUIRED TO START THE

15 ANALYSIS PROCESS TO DETECT THESE E-MAIL ADDRESSES, WEB

16 ADDRESSES AND THINGS LIKE THAT IS A SINGLE CLICK ON THE

17 MOUSE, A RIGHT CLICK ON THE TWO BUTTON MOUSE OR A

18 CONTROL LEFT CLICKING, BECAUSE A LOT OF APPLE MICE ONLY

19 HAD ONE BUTTON, THEN YOU CAN DO A CONTROL CLICK ON ONE

20 BUTTON IF YOU HAD A ONE BUTTON MOUSE. THAT'S THE SAME

21 AS A CLICK ON THE RIGHT BUTTON.

22 Q. IS IT APPROPRIATE TO CHECK THE BOX FOR THE INPUT

23 DEVICE LIMITATION FOR THE CLARIS EMAILER PRODUCT?

24 A. YES, IT IS.

25 Q. LET'S GO ON TO THE UPON A SINGLE ENTRY OF THE

1 EXECUTE COMMAND BY MEANS OF THE INPUT DEVICE
2 LIMITATION. WHAT IS THAT IN THE CLARIS EMAILER
3 PRODUCT?
4 A. WELL, THAT'S THE CLICK ON THE RIGHT BUTTON.
5 BECAUSE AS SOON AS YOU CLICK THAT, TEXT IS ANALYZED, IT
6 DETECTS THE INTERESTING THINGS, THE E-MAILS, THE
7 WEBSITES, ETC., AND IT GOES OUT TO THE DATABASE, FINDS
8 THE ASSOCIATED ACTIONS AND PUTS IT ALL ON THE SCREEN.
9 SO THE SINGLE EXECUTE IS -- ALL IT REQUIRES IS A SINGLE
10 CLICK ON THE RIGHT BUTTON.
11 Q. IN ORDER FOR THAT PROCESS, AS YOU DESCRIBED IT, IN
12 THE CLARIS EMAILER PRODUCT TO OCCUR, DOES THE USER HAVE
13 TO SELECT TEXT IN ANY WAY?
14 A. NO, THEY DO NOT. THE CURSOR CAN BE ANYWHERE IN THE
15 DOCUMENT AND DR. MILLER SHOWED US THAT IN THE
16 DEMONSTRATION.
17 Q. IS IT APPROPRIATE, THEN, TO CHECK THE BOX FOR THE
18 SINGLE ENTRY OF THE EXECUTE COMMAND LIMITATION FOR THE
19 CLARIS EMAILER PRODUCT?
20 A. YES, IT IS.
21 Q. HOW ABOUT THE ANALYZING STEP, WHAT IS THAT IN THE
22 CLARIS EMAILER PRODUCT?
23 A. THAT IS THE DETECTION OF THOSE APPLE DATA
24 DETECTORS, OKAY. SO WHAT IS IT DETECTING? IT'S
25 DETECTING, OBVIOUSLY, THOSE THINGS THAT ARE

1 INTERESTING, THE E-MAIL, THE WEB ADDRESSES, THE
2 PROVIDENCE, RHODE ISLAND ADDRESSES, ETC. SO THAT'S THE
3 ANALYSIS PROCESS, GOING THROUGH THE TEXT OF THE
4 DOCUMENT AND FINDING THOSE THINGS THAT ARE OF INTEREST.

5 Q. SO WHAT, THEN, IS THE FIRST INFORMATION IN THE
6 CLARIS EMAILER PRODUCT?

7 A. THE FIRST INFORMATION IS -- SORRY. THE FIRST
8 INFORMATION IS THE DETECTED STRUCTURES IN THE DOCUMENT.

9 Q. AND AGAIN, WHEN YOU SAY DETECTED STRUCTURES, WHAT
10 ARE YOU REFERRING TO?

11 A. I'M REFERRING TO THE E-MAIL ADDRESSES, THE
12 WORLDWIDE WEB ADDRESS, THE PLACE NAMES, WHICHEVER OF
13 THOSE DETECTORS YOU HAVE TURNED ON.

14 Q. SO IS IT APPROPRIATE IN YOUR OPINION TO CHECK THE
15 BOX FOR THE ANALYZING LIMITATION FOR THE CLARIS EMAILER
16 PRODUCT?

17 A. YES, IT IS.

18 Q. HOW ABOUT THE SEARCHING LIMITATION, IS THAT PRESENT
19 IN THE CLARIS EMAILER PRODUCT?

20 A. IT IS. AS I'VE ALREADY MENTIONED, ONCE YOU'VE
21 DETECTED SOMETHING OF INTEREST, AN E-MAIL ADDRESS, A
22 WEB ADDRESS, THEN WE HAVE TO FIND OUT WHAT THE
23 APPROPRIATE ACTIONS ARE. THESE ACTIONS CAN CHANGE
24 BETWEEN EVERY CLICK OF THE BUTTON. IF YOU RECALL IN
25 THE DEMONSTRATION, DR. MILLER SHOWED HOW YOU CAN CLICK

1 ACTIONS ON AND OFF, YOU CAN DECIDE WHICH ACTIONS YOU
2 WANT FOR A PARTICULAR DETECTED DATA TYPE, LIKE FOR
3 E-MAIL ADDRESSES. AND SO EVERY TIME THAT WE DO THIS
4 RECOGNITION, WE HAVE TO CHECK WHAT THE ASSOCIATION IS,
5 BECAUSE IT MIGHT HAVE BEEN CHANGED. IN FACT, HE SHOWED
6 US THAT. HE RAN IT ONCE AND YOU HAD THIS LIST OF
7 ACTIONS AND THEN WENT TO THE DATABASE AND CHANGED IT
8 AND RAN IT AGAIN, AND WE HAD A NEW ACTION THERE.

9 AND THE ONLY WAY IT FOUND OUT THAT NOW THERE'S A
10 NEW ACTION TO PUT UP ON THE SCREEN, IS BY CHECKING THAT
11 DATABASE. AND THAT IS THE RECORD RETRIEVAL PROGRAM.
12 IT'S A DATABASE OF RECORDS OF ASSOCIATIONS THAT
13 REQUIRES A RECORD RETRIEVAL PROGRAM TO GO TO THAT
14 DATABASE, FIND THOSE ASSOCIATIONS, AND GIVE THE
15 INFORMATION BACK TO THE PROGRAM.

16 Q. SO IN THIS SEARCHING LIMITATION THERE'S A REFERENCE
17 TO AN INFORMATION SOURCE. WHAT IS THE INFORMATION
18 SOURCE IN THE CLARIS EMAILER PRODUCT?

19 A. WELL, THE INFORMATION SOURCE IS THE APPLE DATA
20 DETECTORS DATABASE, WHICH STORES THESE ASSOCIATIONS
21 BETWEEN THE RECOGNIZED TYPES AND THE ACTIONS
22 CORRESPONDING TO THOSE TYPES. LIKE I SAID, WE HAVE TO
23 LOOK THAT UP EVERY TIME WE RUN THIS THING BECAUSE THEY
24 MIGHT HAVE CHANGED.

25 Q. AND WHAT IS THE SECOND INFORMATION REFERRED TO HERE

1 IN THE SEARCHING ELEMENT IN THE CLARIS EMAILER PRODUCT?

2 A. THE SECOND INFORMATION IS ACTUALLY THE LIST OF
3 ACTIONS. NOW, NOTICE WE'RE NOT TALKING ABOUT NAMES AND
4 ADDRESSES HERE. WELL, THAT'S BECAUSE CLAIM 1 DOES NOT
5 TALK ABOUT NAMES AND ADDRESSES. JUST BECAUSE THE
6 PATENT HAD LOTS OF OTHER TEXT GIVING EXAMPLES OF NAMES
7 AND ADDRESSES, YOU'VE GOT TO REMEMBER THAT THIS DOES
8 NOT TALK ABOUT NAMES AND ADDRESSES. SO ANYTHING THAT'S
9 SECOND INFORMATION IS APPROPRIATE AS FAR AS THIS CLAIM
10 IS CONCERNED.

11 AND IN THIS CASE THE SECOND INFORMATION IS THE
12 LIST OF ACTIONS FOR A GIVEN -- FOR A GIVEN DETECTED
13 DATA TYPE, AN E-MAIL ADDRESS, WHAT'S THE APPROPRIATE
14 ACTION. YOU HAVE TO GO TO THE DATABASE AND FIND OUT.
15 SO THAT'S SECOND INFORMATION, EVEN THOUGH IT IS NOT A
16 NAME OR ADDRESS OR SOMETHING LIKE THAT.

17 Q. AND HOW IS THAT SECOND INFORMATION IN THE CLARIS
18 EMAILER PRODUCT ASSOCIATED WITH THE FIRST INFORMATION
19 OF, SAY, AN E-MAIL ADDRESS?

20 A. THE ASSOCIATION IS RECORDED IN THE APPLE DATA
21 DETECTORS' DATABASE.

22 Q. IS IT APPROPRIATE, THEN, IN YOUR VIEW TO CHECK THE
23 BOX FOR THE CLARIS EMAILER PRODUCT AND THE SEARCHING
24 LIMITATION OF CLAIM 1?

25 A. IT IS.

1 Q. LET'S GO ON TO THE LAST LIMITATION, WHICH REFERS TO
2 WHEN THE INFORMATION SOURCE INCLUDES THE SECOND
3 INFORMATION PERFORMING EITHER DISPLAYING, INSERTING, OR
4 COMPLETING. DID YOU FIND THAT IN THE CLARIS EMAILER
5 PRODUCT?

6 A. I DID. AND ONCE AGAIN, REMEMBER WHAT I JUST SAID
7 WAS, THE SECOND INFORMATION IS A LIST OF ACTIONS. WHAT
8 THE CLARIS EMAILER DOES IS TO DISPLAY IN A HIERARCHICAL
9 MENU THE DETECTED STRUCTURES, THE E-MAILS, THE
10 WEBSITES, ETC., AND THE APPROPRIATE ACTIONS. AND THIS
11 HIERARCHICAL MENU IS A STANDARD WAY OF DISPLAYING
12 COMPLEX INFORMATION. REMEMBER, WE COULD FIND 25 OR 30
13 DIFFERENT THINGS IN THIS DOCUMENT, EACH OF WHICH HAS A
14 LIST OF ACTIONS, SO THAT RAPIDLY BECOMES A VERY BIG
15 LIST OF STUFF, SO A STANDARD DISPLAY TECHNIQUE. THIS
16 IS DISPLAYED AS A HIERARCHICAL MENU, DISPLAYS A FIRST
17 LEVEL OF THE MENU. IF YOU WANT TO SEE WHAT'S ON THE
18 SECOND LEVEL, YOU CHOOSE THE ONE YOU'RE INTERESTED IN,
19 YOU SEE THE NEXT LEVEL, ETC.

20 SO IT'S A WAY OF COMPRESSING A LOT OF
21 INFORMATION DOWN TO A SMALL DISPLAY. IT'S A DISPLAY OF
22 THE INFORMATION THAT WAS FOUND IN THAT DATABASE.

23 Q. AND JUST TO TAKE A SPECIFIC EXAMPLE, WHAT IS A
24 DISPLAY OF THE SECOND INFORMATION IN THE CLARIS EMAILER
25 PRODUCT?

1 A. A DISPLAY OF THE SECOND INFORMATION IN THE CLARIS
2 EMAILER PRODUCT; FOR EXAMPLE -- WELL, JUST TO TAKE THE
3 EXAMPLE THAT DR. MILLER SHOWED YOU WHERE HE CLICKED
4 THIS THING, CLICKED THE RIGHT BUTTON, IT FOUND THOSE
5 THREE, THE E-MAIL ADDRESS, THE WEB ADDRESS, THE
6 PROVIDENCE, RHODE ISLAND, IT WENT OUT TO THE DATABASE,
7 FOUND OUT THE ACTIONS THAT ARE ASSOCIATED WITH THOSE
8 AND PUT IT AT THE BOTTOM OF THAT MENU AS A HIERARCHICAL
9 MENU. THERE IS A LITTLE ARROW ON EACH ONE SO YOU CAN
10 LOOK AT THE ACTIONS ASSOCIATED WITH THAT.

11 Q. IS IT APPROPRIATE, THEN, IN YOUR OPINION TO CHECK
12 THE LAST BOX HERE FOR THE LAST ELEMENT OF CLAIM 1 FOR
13 THE CLARIS EMAILER PRODUCT?

14 A. YES, IT IS.

15 Q. NOW, THE NEXT PRODUCT WE'RE GOING TO TALK ABOUT IS
16 COREL WORDPERFECT. WHAT IS THAT PRODUCT?

17 A. WORDPERFECT IS PART OF THE COREL OFFICE SUITE OF
18 TOOLS, WHICH IS LIKE MICROSOFT OFFICE SUITE OF TOOLS
19 AND COREL WORDPERFECT IS REALLY THE COMPETITOR OF
20 MICROSOFT WORD.

21 MR. SCHERKENBACH: MAY WE HAND THE WITNESS
22 EXHIBIT F-17, PLEASE.

23 THE WITNESS: THANK YOU.

24 Q. DR. CROFT, ARE YOU FAMILIAR WITH EXHIBIT F-17?

25 A. YES, I AM. IT'S A PRODUCT BOX FOR COREL OFFICE 7

1 VERSION THAT WAS SOLD IN 1996.

2 Q. AND WHAT'S IN THE BOX?

3 A. THERE ARE TWO CDS CONTAINED IN ALL THE DIFFERENT
4 PROGRAMS ASSOCIATED WITH COREL OFFICE, INCLUDING
5 WORDPERFECT, LICENSING STUFF, AND A BUNCH OF MANUALS,
6 LOTS OF DIFFERENT PROGRAMS IN HERE, NOT JUST WORD
7 PROCESSING, A BUNCH OF OTHER THINGS SO THERE'S LOTS OF
8 MANUALS.

9 Q. IF YOU COULD LOOK AT THE BOX ITSELF, IN THE BOTTOM
10 OF THE BOX, IS THERE A DATE ON IT?

11 A. YES, THERE IS. EVEN THOUGH IT IS RIGHT AT THE
12 LIMIT OF MY SIGHT HERE WITH THESE GLASSES ANYWAY.

13 Q. CAN YOU READ THAT?

14 A. 1996.

15 Q. DID YOU PERSONALLY USE THIS COREL WORDPERFECT
16 PRODUCT, SAY, BEFORE 1998?

17 A. NOT THIS BOX, BUT I CERTAINLY USED COREL
18 WORDPERFECT BEFORE THAT DATE, YES.

19 Q. THE CDS THAT YOU TOOK OUT OF THE BOX, DO THEY HAVE
20 A DATE ON THE LABEL?

21 A. YES, THEY DO. IT'S ALSO 1996.

22 MR. HAYES: YOUR HONOR, THERE IS NO OBJECTION
23 THAT IT'S PRIOR ART.

24 MR. SCHERKENBACH: YOUR HONOR, AT THIS TIME WE
25 ACTUALLY WOULD MOVE EXHIBIT F-17 AS A FULL EXHIBIT.

1 MR. HAYES: THAT'S THE DISC?

2 MR. SCHERKENBACH: IT IS THE BOX WITH THE STUFF,
3 WITH EVERYTHING.

4 MR. HAYES: WHAT ELSE IS IN THE BOX?

5 THE COURT: DO YOU WANT TO LOOK AT THE BOX,
6 MR. HAYES?

7 MR. HAYES: I DON'T CARE IF IT IS THE BOX OR THE
8 DISCS, THAT'S FINE, BUT --

9 THE COURT: DO YOU WANT TO COME UP AND LOOK AT
10 IT?

11 MR. HAYES: CAN I DO THAT, JUDGE?

12 THE COURT: SURE.

13 MR. HAYES: YOUR HONOR, WE DON'T HAVE ANY
14 OBJECTION TO THE ACTUAL PRODUCT, WHICH IS WHAT IS
15 ALLEGED TO BE THE PRIOR ART, BUT WE DO HAVE AN
16 OBJECTION TO THE MANUAL, BECAUSE FROM MY UNDERSTANDING
17 WAS YOU WERE NOT GOING TO TRY TO GET THEM IN.

18 THE COURT: ARE YOU OFFERING THE MANUAL ALSO OR
19 JUST THE DISCS?

20 MR. SCHERKENBACH: WE'LL MOVE THE BOX AND THE
21 CDS, WHICH ARE THE PRODUCT, WITHOUT THE MANUALS AS
22 F-17, THAT'S FINE.

23 MR. HAYES: NO OBJECTION.

24 THE COURT: ALL RIGHT. THE BOX AND THE DISC MAY
25 BE MARKED AS F-17, A FULL EXHIBIT.

1 (DEFENDANT'S EXHIBIT F-17 ADMITTED IN FULL)

2 THE COURT: AND THE OTHER ITEMS IN THE BOX, THE
3 MANUALS AND -- IS THERE ANYTHING ELSE BESIDES THE
4 MANUAL IN THERE?

5 MR. SCHERKENBACH: I THINK THERE IS LICENSING
6 INFORMATION THAT DR. CROFT IDENTIFIED. WHATEVER PAPER
7 IS IN THERE, WE'LL JUST REMOVE.

8 THE COURT: WHATEVER ELSE IS IN THE BOX MAY BE
9 MARKED AS F-17A FOR IDENTIFICATION, ONLY.

10 (DEFENDANT'S EXHIBIT F-17A MARKED FOR I.D.)

11 Q. PROFESSOR CROFT, DO YOU HAVE AN OPINION AS TO
12 WHETHER COREL'S WORDPERFECT 7 PRODUCT INVALIDATES CLAIM
13 1?

14 A. YES, I DO.

15 Q. WHAT IS YOUR OPINION?

16 A. THOSE TWO FEATURES OF WORDPERFECT 7 THAT INVALIDATE
17 CLAIM 1, ONE FEATURE IS THE SPELLCHECKER AND THE OTHER
18 FEATURE IS THE QUICKCORRECT FEATURE AND SEPARATELY THEY
19 INVALIDATE CLAIM 1.

20 Q. CAN YOU JUST TELL US, FIRST OF ALL, JUST AT A HIGH
21 LEVEL WHAT THE SPELLCHECK FEATURE IS, WHAT IT DOES?

22 A. WELL, I'M SURE MOST OF YOU HAVE USED THESE MAYBE.
23 THE SPELLCHECKER CHECKS THE SPELLING OF WORDS IN
24 DOCUMENTS AND IF IT FINDS MISSPELLINGS, IT DISPLAYS
25 SUGGESTIONS ABOUT WHAT WORDS YOU COULD CORRECT IT TO,

1 AND THAT'S BASICALLY THE FUNCTIONALITY.

2 Q. CAN YOU SHOW US HOW THAT PRODUCT WORKS?

3 A. YES, I CAN. CHOOSE THE RIGHT MOUSE HERE.

4 Q. JUST BEFORE YOU START, YOUR HONOR, IF THE JURY MAY

5 SEE THIS TO FOLLOW ALONG THE DEMONSTRATION. THANK YOU.

6 AND PLEASE EXPLAIN EACH STEP YOU'RE TAKING,

7 DR. CROFT, WHEN YOU DEMONSTRATE THE SPELLCHECK.

8 A. YES, I WILL. I HOPE IT'S OKAY, BUT I ALREADY

9 STARTED WORDPERFECT TO BRING UP A BLANK DOCUMENT. SO

10 THIS A BLANK WORDPERFECT DOCUMENT. AND THEN I NEED TO

11 TYPE SOME TEXT IN WITH SOME MISSPELLINGS. SOMETHING

12 LIKE THAT.

13 Q. SO HOW DOES A USER THEN INITIATE THE SPELLCHECK

14 FEATURE?

15 A. THERE'S A COUPLE OF -- ACTUALLY, THREE DIFFERENT

16 WAYS. YOU CAN CLICK ON THIS LITTLE BUTTON THERE WITH

17 THE BOOK AND THE CHECKMARK. YOU CAN GO TO TOOLS, AND

18 CHOOSE SPELLCHECK OFF THIS MENU OR YOU CAN DO THE

19 KEYBOARD COMBINATION OF CONTROL F1.

20 Q. CAN YOU DEMONSTRATE IT BY CLICKING ON THE

21 SPELLCHECK ICON, PLEASE.

22 A. OKAY. SO NOT SURPRISINGLY IT HAS FOUND THE FIRST

23 MISSPELLING AND IT'S HIGHLIGHTED IT, AND IT'S GIVEN ME

24 A SUGGESTION OF WHAT TO REPLACE IT WITH, SENTENCE,

25 REPLACING SENTENCE WITH SENTENCE. AND THEN I CAN

1 CHOOSE TO REPLACE IT AND IT WILL GO ON -- IF I DO THAT,
2 IT WILL GO ON TO THE NEXT MISSPELLING AND GIVE ME A
3 SUGGESTION ABOUT WHAT THE CORRECT SPELLING IS.

4 Q. NOW, BEFORE YOU REPLACE THAT SECOND ONE, I WANT TO
5 ASK YOU SOME QUESTIONS ABOUT THE SCREEN WE HAVE IN
6 FRONT OF US. WHEN YOU CLICKED ON THE SPELLCHECK ICON,
7 HOW MANY COMMANDS WAS THAT?

8 A. THAT WAS A SINGLE COMMAND TO SPELLCHECK THE ENTIRE
9 DOCUMENT, WHICH IS JUST A LITTLE DOCUMENT.

10 Q. DID YOU HAVE TO SELECT THE TEXT IN ANY WAY IN ORDER
11 TO INVOKE THE SPELLCHECKER?

12 A. NO, I DIDN'T. THE CURSOR WAS ACTUALLY A COUPLE OF
13 LINES BELOW THE TEXT THAT WAS CHECKED.

14 Q. AND AFTER YOU CLICKED ON THE SPELLCHECK ICON, WHAT
15 DID THE PROGRAM DO?

16 A. IT ANALYZED THE TEXT IN THE DOCUMENT TO FIND
17 MISSPELLINGS. AND ONCE IT HAD IDENTIFIED THE
18 MISSPELLINGS, IT DETERMINED WHAT ARE POTENTIAL CORRECT
19 VERSIONS OF THESE MISSPELLINGS. AND WHEN IT DETERMINED
20 THAT, IT DISPLAYED THE MISSPELLED WORD ALONG WITH THE
21 POSSIBLE CORRECTIONS.

22 Q. SO IN APPLYING THIS TO CLAIM 1, AND WE'LL GO
23 THROUGH THE ELEMENTS, BUT JUST TELL US GENERALLY WHAT
24 IS THE FIRST INFORMATION THAT YOU FIND IN WORDPERFECT
25 SPELLCHECK?

1 A. ONCE AGAIN, I'LL JUST HAVE TO ALSO ADD THAT WE'RE
2 NOT TALKING ABOUT NAMES AND ADDRESSES HERE BECAUSE
3 CLAIM 1 DOESN'T TALK ABOUT NAMES AND ADDRESSES. WE ARE
4 TALKING ABOUT MISSPELLED WORDS AND THE CORRECTIONS.
5 BUT IN THIS CASE, THE FIRST INFORMATION IS THE
6 MISSPELLED WORDS. IT'S ANALYZED THE TEXT AND IT'S
7 FOUND THE MISSPELLED WORDS.

8 Q. WHAT IS THE SECOND INFORMATION?

9 A. THE SECOND INFORMATION, WHICH IT HAS TO IDENTIFY
10 WITH THE AID OF THE DICTIONARY, ALL SPELLCHECKERS HAVE
11 A BIG DICTIONARY OF CORRECT WORDS WHICH IT USES TO HELP
12 IDENTIFY POTENTIAL MISSPELLINGS. SO IT GOES TO THAT
13 DICTIONARY AND USES THAT DICTIONARY PLUS SOME OTHER
14 RULES TO IDENTIFY POTENTIAL -- POTENTIAL CORRECTIONS.

15 Q. AND SO THE SECOND INFORMATION IS WHAT?

16 A. THE SECOND INFORMATION IS THE POTENTIALLY --
17 POTENTIAL CORRECTIONS FOR YOUR WORD.

18 Q. AND ON THE SPECIFIC SCREEN WE'RE LOOKING AT NOW CAN
19 YOU POINT US TO EXAMPLES OF SECOND INFORMATION?

20 A. SO "MISSPELED" WITHOUT THE "L" IS -- THE
21 HIGHLIGHTED ONE UP HERE IS THE FIRST INFORMATION, IT'S
22 REPEATED DOWN HERE WHERE IT SAYS REPLACE WITH THE WORD
23 -- THE CORRECT SPELLING OF MISSPELLED IS THE SECOND
24 INFORMATION.

25 Q. AND YOU MENTIONED THE SPELLING DICTIONARY. WHAT IS

1 THE INFORMATION SOURCE IN WORDPERFECT'S 7 SPELLCHECK?
2 A. THE INFORMATION SOURCE IS THE SPELLING DICTIONARY.
3 THIS IS A LARGE FILE OF WORDS WHICH IS SEARCHED TO
4 IDENTIFY MISSPELLINGS.
5 Q. IS THAT DICTIONARY IDENTIFIED HERE ON THE SCREEN IN
6 ANY WAY?
7 A. YES, IT IS. IT'S UNDER -- I CLICKED ON THE
8 CUSTOMIZE THING HERE -- THEY'RE CALLED WORD LISTS IN
9 WORDPERFECT. AND HERE IT SAYS WHAT YOU ARE CURRENTLY
10 USING BECAUSE YOU CAN ADD ADDITIONAL WORD LISTS AND YOU
11 CAN ALSO ADD WORDS TO THE CURRENT WORD LIST, YOU CAN
12 ALSO ADD NEW WORD LISTS. AND THIS SAYS THAT WE ARE
13 JUST USING THE ENGLISH U.S. WORD LIST AT THE MOMENT.
14 Q. IF YOU CAN GO BACK TO THE PREVIOUS SCREEN. DO YOU
15 FIND ON HERE THE DISPLAY OF SECOND INFORMATION?
16 A. YES, IT'S RIGHT IN FRONT OF US HERE. THIS IS A
17 DISPLAY THAT WAS POPPED UP BY COREL WORDPERFECT ON TOP
18 OF THE DOCUMENT, WHICH SHOWS YOU THE POSSIBLE
19 CORRECTIONS, WHICH ARE THE SECOND INFORMATION.
20 Q. CAN WE GO TO OUR CLAIM CHART, PLEASE.
21 NOW, BACK TO OUR CLAIM CHART, DR. CROFT. FIRST
22 OF ALL, THE PREAMBLE, CAN YOU JUST TELL US BRIEFLY IF,
23 IN YOUR OPINION, THE ELEMENTS OF THE PREAMBLE ARE
24 PRESENT IN WORDPERFECT 7 SPELLCHECKER?
25 A. WELL, WE'RE WORKING IN A WORD PROCESSING DOCUMENT

1 AND WE'RE DOING INFORMATION HANDLING, WE'RE CHANGING
2 THE CONTENTS OF THAT DOCUMENT USING THE TECHNOLOGY
3 DISCLOSED IN THE PRIOR ART.

4 Q. HOW ABOUT A RECORD RETRIEVAL PROGRAM, WHERE OR WHAT
5 IS THAT IN WORDPERFECT 7?

6 A. THE RECORD RETRIEVAL PROGRAM IS THE PART OF THE
7 SPELLCHECK PROGRAM THAT'S REQUIRED TO SEARCH THIS LARGE
8 DICTIONARY OF WORDS.

9 Q. IS IT APPROPRIATE TO CHECK THE BOX FOR THE RECORD
10 RETRIEVAL PROGRAM ELEMENT FOR WORDPERFECT SPELLCHECKER?

11 A. YES, IT IS.

12 Q. WHAT'S THE INPUT DEVICE IN WORDPERFECT 7
13 SPELLCHECKER?

14 A. I DISCUSSED THREE POSSIBLE WAYS YOU CAN START THIS
15 WHOLE PROCESS. THE OBVIOUS ONE IS CLICKING ON THAT
16 BUTTON THAT I DID BEFORE. AND YOU COULD ALSO SELECT
17 FROM A MENU OR DO A KEY STROKE COMBINATION. SO EITHER
18 -- ANY OF THOSE WOULD SATISFY THAT.

19 Q. IS IT APPROPRIATE TO CHECK THAT ELEMENT FOR
20 WORDPERFECT SPELLCHECKER?

21 A. YES, IT IS.

22 Q. AND WHAT WAS THE SINGLE ENTRY OF THE EXECUTE
23 COMMAND IN THE WORDPERFECT SPELLCHECK PROGRAM?

24 A. WELL, AS IN THE EXAMPLE I SHOWED YOU, A SINGLE
25 CLICK ON THAT BUTTON STARTED THE WHOLE PROCESS, THE

1 MISSPELLED WORDS ARE IDENTIFIED AUTOMATICALLY. THE
2 POSSIBLE CORRECTIONS WERE IDENTIFIED AUTOMATICALLY, AND
3 THAT WAS ALL DISPLAYED TO THE USER AUTOMATICALLY.

4 Q. IS IT APPROPRIATE, THEN, TO CHECK THE THIRD BOX
5 HERE FOR WORDPERFECT 7 SPELLCHECKER?

6 A. YES, IT IS.

7 Q. HOW ABOUT THE ANALYZING LIMITATION, HOW WAS THE
8 DOCUMENT ANALYZED TO DETERMINE IF IT CONTAINED FIRST
9 INFORMATION?

10 A. WELL, CLEARLY, THE PROGRAM IDENTIFIED THE
11 MISSPELLED WORDS, AND IT DOES THAT USING A COMBINATION
12 OF THE DICTIONARY AND SOME RULES ABOUT HOW WORDS CAN
13 CHANGE ENDINGS.

14 Q. LET ME GO BACK -- ACTUALLY, WOULD IT BE APPROPRIATE
15 THEN TO CHECK THE BOX, IN YOUR OPINION, FOR THE
16 ANALYZING ELEMENT FOR WORDPERFECT SPELLCHECKER?

17 A. YES.

18 Q. I NEGLECTED TO ASK YOU FOR THE SINGLE ENTRY OF THE
19 EXECUTE COMMAND LIMITATION, DID YOU HAVE TO SELECT THE
20 TEXT IN ANY WAY IN ORDER TO HAVE THE SPELLCHECKER WORK?

21 A. NO, I DIDN'T. THE CURSOR COULD HAVE BEEN ANYWHERE
22 WHEN I CLICKED ON THAT.

23 Q. NOW, IF WE GO ON TO THE SEARCHING LIMITATION.
24 WHERE DO YOU FIND THAT IN THE WORDPERFECT 7 SPELLCHECK
25 FEATURE?

1 A. THAT'S THE PART OF THE SPELLCHECK PROGRAM THAT'S
2 REQUIRED TO FIND THE SECOND INFORMATION WHICH IS IN THE
3 DICTIONARY. YOU HAVE TO SEARCH THAT DICTIONARY, LOOK
4 FOR MISSPELLED WORDS USING RULES IN THE DICTIONARY AND
5 THAT IS THE SEARCHING PART.

6 Q. IS IT APPROPRIATE TO CHECK THE BOX FOR THE
7 SEARCHING LIMITATION WITH RESPECT TO WORDPERFECT 7
8 SPELLCHECK?

9 A. YES, IT IS.

10 Q. LET'S GO TO THE LAST ELEMENT, EITHER DISPLAYING,
11 INSERTING, OR COMPLETING INFORMATION. WHERE DID YOU
12 FIND THAT IN THE WORDPERFECT7 SPELLCHECK PROGRAM?

13 A. THE PROGRAM DISPLAYED THE INFORMATION ABOUT THE
14 POSSIBLE CORRECTIONS ON TOP OF THE DOCUMENT. WE SAW
15 THAT IN THE DEMONSTRATION.

16 Q. AND AGAIN, THE SECOND INFORMATION IN THE
17 SPELLCHECKER IS WHAT?

18 A. THE POSSIBLE CORRECTIONS FOR THE MISSPELLED WORDS.

19 Q. NOW, YOU MENTIONED THERE WAS A SECOND FEATURE IN
20 THE WORDPERFECT 7 PRODUCT THAT YOU ALSO THOUGHT RELATED
21 TO CLAIM 1; CORRECT?

22 A. YES, THERE IS, CALLED QUICKCORRECT.

23 Q. QUICKCORRECT?

24 A. QUICKCORRECT.

25 Q. WHAT IS QUICKCORRECT?

1 A. IT'S A FEATURE FOR CHANGING -- BASICALLY EXPANDING
2 ABBREVIATIONS. SO IN OTHER WORDS, NOT NECESSARILY --
3 IT COULD BE USED FOR CORRECTING MISSPELLINGS, BUT IT'S
4 ALSO USED FOR EXPANDING ABBREVIATIONS, COMMON
5 SHORTHANDS THAT YOU MIGHT WANT TO USE AND THEN
6 EXPANDING THAT TO CORRECT WORDS.

7 Q. CAN YOU GIVE THE JURY A SPECIFIC EXAMPLE OF WHAT
8 YOU MEAN?

9 A. FOR EXAMPLE, YOU MIGHT USE "ASAP" IN A DOCUMENT AND
10 WANT TO REPLACE THAT WHEN YOU GET MORE FORMAL WITH "AS
11 SOON AS POSSIBLE."

12 Q. CAN YOU DEMONSTRATE FOR US HOW THE WORDPERFECT
13 QUICKCORRECT FEATURE WORKS?

14 A. YES, I CAN. I'M JUST GOING TO CREATE SOME NEW TEXT
15 IN THIS DOCUMENT.

16 Q. AND AGAIN, PLEASE DESCRIBE EACH STEP YOU'RE TAKING
17 IN WORDS AS YOU DO IT.

18 A. SO I'M GOING TO USE A COUPLE OF ABBREVIATIONS THAT
19 I HAVE PUT IN THE QUICKCORRECT FILE OF CORRECTIONS,
20 WHICH I'LL SHOW YOU JUST IN A MINUTE, BUT I'LL DO THE
21 EXAMPLE FIRST.

22 Q. AND FOR THE RECORD, CAN YOU READ WHAT YOU HAVE
23 TYPED, PLEASE.

24 A. WHAT I MEANT TO TYPE IS, "SEE YOU LATER, I'LL BE
25 BACK AS SOON AS POSSIBLE, I.E., TOMORROW."

1 Q. WHAT DID YOU ACTUALLY TYPE?

2 A. "CYA LATER, I'LL BE BACK ASAP." AND I ACTUALLY
3 THREW IN A SPELLING ERROR FOR GOOD MEASURE AT THE END
4 THERE.

5 Q. NOW, HOW DOES THE USER USE THE QUICKCORRECT FEATURE
6 TO FIX WHAT YOU HAVE TYPED?

7 A. YOU CLICK ON THE SAME BUTTON OR SAME KEYBOARD
8 COMBINATION AS YOU DO AS THE SPELLCHECK.

9 Q. CAN YOU SHOW US THAT?

10 A. YES. IF I CLICK ON THIS, YOU CAN SEE IT'S REPLACED
11 THOSE ABBREVIATIONS WITH THE FULL VERSIONS OF THE WORD.
12 AND BY THE WAY, IT ALSO IDENTIFIED THE LAST PIECE OF
13 PRIOR ART, IT IDENTIFIED THE SPELLING ERROR AND COME UP
14 WITH A SUGGESTION. THAT'S THE PREVIOUS PIECE OF PRIOR
15 ART. THIS PIECE OF PRIOR ART HAS DONE THE REPLACEMENT
16 OF CYA AND ASAP.

17 Q. SO IS IT THE SAME -- IT'S THE SAME BUTTON THAT
18 INVOKES BOTH THE SPELLCHECKER AND QUICKCORRECT?

19 A. THAT'S CORRECT.

20 Q. HOW DOES WORDPERFECT KNOW TO REPLACE "CYA" WITH
21 "SEE YOU LATER" OR "ASAP" WITH "AS SOON AS POSSIBLE"?

22 A. WELL, THERE'S A FILE OF SIMPLE RECORDS, WHICH SAYS,
23 ONE COLUMN SAYS HERE'S THE THINGS TO LOOK FOR AND THE
24 OTHER COLUMN SAYS HERE'S WHAT TO REPLACE IT WITH, AND
25 I'LL JUST SHOW YOU THAT FILE.

1 Q. AND AGAIN, TALK THROUGH THE STEPS THAT YOU ARE
2 TAKING, PLEASE, FOR THE RECORD, AS YOU DO IT.

3 A. SO I'M GOING UP TO THE TOOLS MENU, I'M GOING TO
4 SELECT QUICKCORRECT.

5 Q. AND WHAT ARE WE LOOKING AT?

6 A. WE'RE LOOKING AT THE QUICKCORRECT FILE OF
7 REPLACEMENTS. SO THE LEFT-HAND SIDE IS WORDS THAT IT'S
8 LOOKING FOR IN THE TEXT, AND THE RIGHT-HAND SIDE IS
9 REPLACEMENTS IT'S GOING TO MAKE. SO, FOR EXAMPLE, HERE
10 IS "ASAP" TO BE REPLACED WITH "AS SOON AS POSSIBLE."
11 IF WE WENT FURTHER DOWN, WE WOULD SEE THE "CYA" ONE FOR
12 "SEE YOU" AS A REPLACEMENT.

13 Q. CAN WE CLOSE THIS AND GO BACK TO THE SCREEN,
14 PLEASE.

15 HOW MANY COMMANDS DID YOU HAVE TO ENTER TO
16 INVOKE THE QUICKCORRECT FEATURE?

17 A. A SINGLE COMMAND, JUST A CLICK ON THE BUTTON THERE
18 OR THE EQUIVALENT TO THAT ON THE MENU SELECTION OR
19 SOMETHING LIKE THAT.

20 Q. DID YOU HAVE TO SELECT THE TEXT IN ANY WAY?

21 A. NO, I DIDN'T. THE FIRST TIME I RAN THIS THE CURSOR
22 WAS WELL BELOW THE LINE THAT WAS ACTED ON. THE CURSOR
23 COULD BE ANYWHERE.

24 Q. AND AFTER YOU SELECTED THE QUICKCORRECT BUTTON,
25 WHAT DID THE PROGRAM DO?

1 A. THE PROGRAM ANALYZED THE TEXT LOOKING FOR WORDS
2 THAT NEEDED TO BE REPLACED, THE LEFT-HAND COLUMN OF
3 THAT FILE. WHEN IT FINDS A WORD TO BE REPLACED, IT
4 REPLACES IT.

5 Q. CAN WE GO TO OUR CLAIM CHART, PLEASE.

6 CAN YOU TELL US, DR. CROFT, WHETHER, IN YOUR
7 OPINION, THE PREAMBLE OF CLAIM 1 APPLIES TO WORDPERFECT
8 7 QUICKCORRECT?

9 A. YES, IT DOES. WE ARE STILL IN A WORD PROCESSING
10 DOCUMENT, WE'RE STILL MANIPULATING THE CONTENTS OF THAT
11 DOCUMENT, AND SO THAT PREAMBLE IS SATISFIED.

12 Q. IF WE GO TO THE FIRST ELEMENT OF THE CLAIM, RECORD
13 RETRIEVAL PROGRAM, WHAT IS THE RECORD RETRIEVAL PROGRAM
14 IN QUICKCORRECT?

15 A. THE RECORD RETRIEVAL PROGRAM IS THE PART OF THE
16 QUICKCORRECT PROGRAM THAT'S REQUIRED TO SEARCH THAT
17 FILE OF REPLACEMENT TEXT THAT I SHOWED YOU.

18 Q. IS IT APPROPRIATE TO CHECK THE BOX NEXT TO THE
19 RECORD RETRIEVAL PROGRAM ELEMENT FOR QUICKCORRECT?

20 A. YES, IT IS.

21 Q. AND THE INPUT DEVICE, I BELIEVE YOU TOLD US THIS,
22 BUT WHAT IS IT IN QUICKCORRECT?

23 A. IT'S THE BUTTON OR KEYBOARD COMBINATION OR MENU
24 SELECTION.

25 Q. AND IT IS THE SAME ONE AS IT IS FOR SPELLCHECK?

1 A. IT IS.

2 Q. IS IT APPROPRIATE TO CHECK THAT BOX?

3 A. YES, IT IS.

4 Q. AND WHAT IS THE SINGLE ENTRY OF THE EXECUTE COMMAND

5 THAT YOU USED IN QUICKCORRECT?

6 A. IT WAS ACTUALLY CLICKING ON THE BUTTON. ONCE

7 AGAIN, IT COULD BE ANY ONE OF THOSE THINGS, BUT THAT

8 STARTED THE WHOLE PROCESS OF REPLACING THE TEXT.

9 Q. IS IT APPROPRIATE TO CHECK THE BOX FOR THE SINGLE

10 ENTRY OF THE EXECUTE COMMAND FOR QUICKCORRECT?

11 A. YES, IT IS.

12 Q. HOW ABOUT THE ANALYZING LIMITATION, WHERE DID YOU

13 FIND THAT IN QUICKCORRECT?

14 A. WELL, THE TEXT HAS TO BE ANALYZED TO IDENTIFY THE

15 WORDS THAT ARE GOING TO BE REPLACED. SO IT HAS TO LOOK

16 AT THE TEXT AND THEN USING THE LIST OF THINGS THAT IT

17 KNOWS HAS TO BE REPLACED, HAS TO IDENTIFY THEM.

18 Q. WHAT IS THE FIRST INFORMATION IN THE EXAMPLE OF

19 QUICKCORRECT?

20 A. THE FIRST INFORMATION ARE THE WORDS OR

21 ABBREVIATIONS, IN THIS CASE, WHICH HAVE BEEN DETERMINED

22 TO HAVE REPLACEMENTS IN THE QUICKCORRECT FILE.

23 Q. SO IN YOUR SPECIFIC EXAMPLE, GIVE US AN EXAMPLE OF

24 WHAT WAS FIRST INFORMATION?

25 A. FOR EXAMPLE, THE "CYA" FOR "SEE YOU."

1 Q. IS IT APPROPRIATE TO CHECK THE BOX FOR WORDPERFECT7
2 QUICKCORRECT AND THE ANALYZING THE DOCUMENT LIMITATION?

3 A. YES, IT IS.

4 Q. IF WE GO ON TO THE SEARCHING LIMITATION, WHERE DID
5 YOU FIND THAT IN THE QUICKCORRECT FEATURE?

6 A. ONCE YOU HAVE THE INFORMATION THAT HAS TO BE
7 REPLACED, YOU STILL HAVE TO FIND THE REPLACEMENT TEXT,
8 AND SO IT'S THE PART OF THE PROGRAM THAT'S REQUIRED TO
9 FIND THE REPLACEMENT TEXT.

10 Q. AND WHAT IS THE INFORMATION SOURCE IN QUICKCORRECT?

11 A. IT'S THE QUICKCORRECT FILE THAT I SHOWED YOU WITH
12 THE TWO ENTRIES IN IT IN THE RECORDS.

13 Q. AND WHAT IS THE SECOND INFORMATION IN WORDPERFECT
14 QUICKCORRECT?

15 A. THE SECOND INFORMATION IS THE WORDS THAT ARE GOING
16 TO REPLACE THE ABBREVIATION.

17 Q. IS IT APPROPRIATE TO CHECK THE BOX NEXT TO THE
18 SEARCHING LIMITATION FOR QUICKCORRECT?

19 A. YES, IT IS.

20 Q. AND, FINALLY, WE HAVE THE DISPLAY INSERT OR
21 COMPLETE ELEMENT OF CLAIM 1. WHERE DID WE SEE THAT FOR
22 QUICKCORRECT?

23 A. WELL, THE SECOND INFORMATION, LIKE "AS SOON AS
24 POSSIBLE" WAS INSERTED INTO THE DOCUMENT, AND SO IT
25 SATISFIES THIS ELEMENT OF THE CLAIM.

1 Q. IS IT APPROPRIATE TO CHECK THAT LAST BOX?

2 A. YES, IT IS.

3 Q. LET'S GO ON TO OUR LAST PRIOR ART REFERENCE.

4 MR. SCHERKENBACH: MAY THE WITNESS, SEE, PLEASE,
5 EXHIBIT U-18.

6 MR. HAYES: EXCUSE ME, YOUR HONOR, MAY I BE
7 EXCUSED FOR A MINUTE.

8 THE COURT: YES. DO YOU WANT A BRIEF RECESS,
9 MR. HAYES?

10 MR. HAYES: NO, I'LL BE RIGHT BACK.

11 MR. SCHERKENBACH: YOUR HONOR, IF I MAY
12 APPROACH, WE HAVE OUR COPY OF THE EXHIBIT AS WELL TO
13 GIVE TO THE WITNESS.

14 THE CLERK: U AS IN UNCLE?

15 MR. SCHERKENBACH: I BELIEVE SO, YES.

16 THE COURT: WHY DON'T YOU GIVE YOUR COPY TO THE
17 WITNESS.

18 MR. SCHERKENBACH: THANK YOU, YOUR HONOR.

19 Q. DR. CROFT, DO YOU RECOGNIZE THE PATENT I JUST
20 HANDED YOU WHICH IN THE COURT'S FILE IS MARKED AT U-18,
21 I'M NOT SURE THAT COPY IS, BUT DO YOU RECOGNIZE IT?

22 A. YES, I DO.

23 Q. WHAT IS IT?

24 A. IT'S A PATENT, PATENT NUMBER 4,674,065, AND IT'S A
25 PATENT BY -- THAT'S ASSIGNED BY IBM, DONE BY TWO

1 INVENTORS, LANG AND ROSENBAUM. AND IT'S ENTITLED,
2 "SYSTEM FOR DETECTING AND CORRECTING CONTEXTUAL ERRORS
3 IN A TEXT PROCESSING SYSTEM."

4 MR. SCHERKENBACH: YOUR HONOR, WE MOVE THE
5 ADMISSION OF EXHIBIT U-18 AS A FULL EXHIBIT.

6 MR. HAYES: NO OBJECTION.

7 THE COURT: U-18 MAY BE ADMITTED AS A FULL
8 EXHIBIT.

9 (DEFENDANT'S EXHIBIT U-18 ADMITTED IN FULL)

10 MR. SCHERKENBACH: AND MAY IT BE PUBLISHED TO
11 THE JURY, YOUR HONOR.

12 Q. DR. CROFT, IS THE IBM PATENT THAT WE ARE LOOKING
13 AT, EXHIBIT U-18, ONE OF THE REFERENCES THAT IN YOUR
14 OPINION INVALIDATES CLAIM 1?

15 A. YES, IT IS.

16 Q. CAN YOU TELL US, FIRST OF ALL, JUST GENERALLY, WHAT
17 THIS PATENT RELATES TO?

18 A. YES. THE BASIC IDEA OF THIS PATENT IS THAT YOU'RE
19 IN A DOCUMENT AND THEN WITH A SINGLE COMMAND I CAN ASK
20 IT TO LOOK FOR WHAT THEY CALL IN THIS DOCUMENT,
21 CONFUSABLE WORDS. THESE ARE WORDS LIKE "THERE" AND
22 "THEIR," AND "ACCEPT" AND "EXCEPT," WHICH SOUND THE
23 SAME BUT THEY'RE QUITE DIFFERENT. PEOPLE OFTEN GET
24 THEM CONFUSED. THEY GO WHICH IS THE RIGHT WAY TO SPELL
25 "ACCEPT," FOR EXAMPLE, AND THIS SYSTEM IS DESIGNED TO

1 WORK WITH A WORD PROCESSING SYSTEM TO DETECT THOSE
2 POTENTIALLY CONFUSABLE WORDS. AND THEN ONCE IT HAS
3 DETECTED THEM, IT WILL CHECK TO SEE WHETHER, IN FACT,
4 IT LOOKS LIKE THEY ARE POTENTIALLY CONFUSABLE IN THE
5 CONTEXT OF THE TEXT THEY'RE IN IN THE DOCUMENT. AND IF
6 THEY ARE, IT GOES OUT TO A FILE OF ALTERNATIVE WORDS
7 AND THEIR DEFINITIONS AND IT DISPLAYS TO THE USER HERE
8 IS THE ALTERNATIVES FOR THIS WORD, LIKE BOTH VERSIONS
9 OF ACCEPT WITH THE DEFINITION OF THAT WORD. AND THEN
10 THE USER CAN CHOOSE WHICH OF THOSE ONES THEY REALLY
11 MEANT TO PUT IN THE DOCUMENT.

12 Q. IS THERE A FIGURE IN THE PATENT THAT SHOWS
13 GRAPHICALLY WHAT YOU JUST DESCRIBED?

14 A. THERE'S ACTUALLY TWO FIGURES THAT SHOW PRETTY
15 CLEARLY WHAT THE IDEA OF THIS PATENT IS.

16 Q. LET'S TAKE A LOOK AT ONE OF THE FIGURES. I'M
17 SHOWING YOU FIGURE 6 FROM THE IBM PATENT. DO YOU
18 RECOGNIZE THIS FIGURE?

19 A. YES, I DO.

20 Q. AND WHAT DOES IT SHOW?

21 A. SO WE'RE IN A DOCUMENT, WE'VE INVOKED THE FUNCTION
22 THAT THIS PATENT DESCRIBES. IT HAS DETECTED THREE
23 WORDS THAT ARE POTENTIALLY CONFUSABLE, IT FOUND THE
24 WORD "AFFECT" AND THE WORD "CONFIDANT" AND "COURSE."
25 AND YOU CAN SEE IT'S BOLDED THOSE THREE WORDS TO LET

1 THE USER KNOW THAT I HAVE FOUND THREE OF THOSE
2 POTENTIAL CONFUSIONS, AND IT ALSO INSERTED A DISPLAY
3 FOR THE FIRST ONE OF THE ALTERNATIVE WORDS THAT THE
4 USER MIGHT HAVE MEANT AND THEIR DEFINITIONS TO HELP
5 THEM CHOOSE WHICH ONE THEY REALLY DID MEAN.

6 Q. JUST AS A PRACTICAL MATTER, HOW DOES THE SYSTEM
7 DISCLOSED IN THE IBM PATENT WORK, IN OTHER WORDS, TO
8 THE USER, HOW DOES IT WORK?

9 A. AS A PRACTICAL MATTER, HOW DOES IT WORK?

10 Q. LET ME ASK A DIFFERENT QUESTION. HOW DOES A USER
11 INVOKE THE SYSTEM, GET IT STARTED?

12 A. IT TALKS ABOUT BEING ABLE TO CHOOSE A MENU ITEM
13 FROM A WORD PROCESSOR AND THEN THIS WHOLE PROCESS WOULD
14 START OR WHATEVER -- IT WOULD AUTOMATICALLY, UNTIL YOU
15 GOT TO THE POINT WHERE THE USER GETS TO CHOOSE WHICH OF
16 THE ONES THEY REALLY MEANT TO PUT IN THE DOCUMENT.

17 MR. SCHERKENBACH: CAN WE SWITCH TO THE CLAIM
18 CHART, PLEASE.

19 Q. SO BEFORE WE GO THROUGH THE PARTICULAR ELEMENTS,
20 CAN YOU TELL US WHETHER IT'S YOUR OPINION THAT THE
21 PREAMBLE OF CLAIM 1 DESCRIBES THE SYSTEM IN THE IBM
22 PATENT?

23 A. YES, IT DOES. IT TALKS ABOUT DOING THIS TYPE OF
24 DETECTION OF CONFUSION AND HELPING THE USER TO REPLACE
25 THOSE CONFUSABLE WORDS. IT TALKS ABOUT DOING ALL THIS

1 WHILE THE DOCUMENT IS -- WHILE THE USER IS IN A
2 DOCUMENT.

3 Q. IS THERE A PORTION OF THE PATENT YOU CAN POINT TO
4 -- I'M GOING TO PUT UP THE COVER HERE AND ASK YOU
5 WHETHER THERE IS ANYTHING IN THE ABSTRACT THAT YOU
6 RELIED ON IN REACHING YOUR OPINION WITH RESPECT TO THE
7 PREAMBLE?

8 A. YES, I DID. I MEAN YES, THERE IS. LET ME JUST
9 READ THE FIRST COUPLE OF LINES. "A SYSTEM FOR
10 AUTOMATICALLY PROOFREADING A DOCUMENT FOR WORD USE
11 VALIDATION IN A TEXT PROCESSING SYSTEM IS PROVIDED BY
12 COUPLING A SPECIALIZED DICTIONARY OF SETS OF
13 HOMOPHONES, WHICH ARE WORDS THAT SOUND THE SAME, AND
14 CONFUSABLE WORDS," ETC.

15 MR. SCHERKENBACH: NOW, IF WE CAN GO BACK TO THE
16 CLAIM CHART AGAIN.

17 Q. WHAT IS THE RECORD RETRIEVAL PROGRAM FOR THE IBM
18 SYSTEM?

19 A. WELL, IT'S THE PROGRAM THEY DESCRIBE THAT -- FOR
20 ACCESSING THESE ALTERNATIVES WORDS AND DEFINITIONS.
21 ONCE IT IS IDENTIFIED, DONE THE ANALYSIS TO IDENTIFY
22 THESE POTENTIALLY CONFUSING WORDS -- I'LL USE CONFUSING
23 INSTEAD OF CONFUSABLE -- THESE POTENTIALLY CONFUSING
24 WORDS, IT THEN HAS TO GO OUT AND FIND ALL THE
25 ALTERNATIVES AND THEIR DEFINITIONS. SO IT IS A PART OF

1 THE PROGRAM OR PART OF THE TECHNIQUE THEY DESCRIBE THAT
2 IS REQUIRED TO GO OUT TO THE FILE OF DEFINITIONS AND
3 ALTERNATIVE WORDS, RETRIEVE THEM AND BRING THEM BACK TO
4 CREATE THAT DISPLAY.

5 Q. DID YOU FIND A DESCRIPTION IN THE PATENT ITSELF
6 RELATING TO THE RECORD RETRIEVAL PROGRAM?

7 A. YES, IN A COUPLE OF PLACES.

8 Q. WHERE WAS THAT?

9 A. WELL, ONE, IS IN TABLE 7.

10 Q. WE'LL PUT UP TABLE 7 HERE. AND IF YOU COULD
11 EXPLAIN FOR US HOW TABLE 7 RELATES TO A RECORD
12 RETRIEVAL PROGRAM?

13 A. WELL, THIS IS WRITTEN IN A FORM OF PSEUDO-CODE,
14 LIKE A HIGH-LEVEL PROGRAMMING LANGUAGE, MORE LIKE
15 ENGLISH THAN A REAL PROGRAMMING LANGUAGE. AND IT IS
16 BASICALLY SAYING WHEN -- IT'S CALLED, ONCE YOU'VE FOUND
17 SOME CONFUSING WORDS, THE EARLY PART OF THE ANALYSIS,
18 THIS PROGRAM IS CALLED USING THE ADDRESS OF THE WORD
19 YOU FOUND, WHICH WAS POTENTIALLY CONFUSING, TO LOOK UP
20 THE RECORDS OF THE ALTERNATIVE WORDS AND THEIR
21 DEFINITIONS. SO IT CLEARLY TALKS ABOUT OBTAINING
22 RECORDS, READING THE NEXT RECORDS FROM THESE FILES OF
23 CONFUSABLE WORD DEFINITIONS AND CONFUSABLE WORDS. SO
24 THIS IS A RECORD RETRIEVAL PROGRAM.

25 Q. IS IT APPROPRIATE, THEN, IN YOUR VIEW, TO CHECK THE

1 BOX FOR RECORD RETRIEVAL PROGRAM WITH RESPECT TO THE
2 IBM PATENT?

3 A. YES, IT IS.

4 Q. HOW ABOUT THE INPUT DEVICE, WHAT DOES THE IBM
5 PATENT HAVE TO SAY ABOUT THE INPUT DEVICE LIMITATION?

6 A. THERE IS DISCUSSION IN THE SPECIFICATION ABOUT
7 USING A MENU TO INVOKE THIS FUNCTION.

8 Q. LET'S TAKE A LOOK AT COLUMN 8, DR. CROFT, AND TELL
9 US IF THERE IS ANYTHING THERE THAT, IN YOUR OPINION,
10 RELATES TO THE INPUT DEVICE LIMITATION OF CLAIM 1?

11 A. WELL, AS THIS SENTENCE SAYS, "IN OPERATION, THE
12 CONTEXTUAL ERROR DETECTION AND CORRECTION FUNCTION MAY
13 BE INVOKED IN A TEXT PROCESSING SYSTEM," WHICH IS
14 ANOTHER WORD FOR A WORD PROCESSING SYSTEM, "THROUGH A
15 CONVENTIONAL MENU TASK SELECTION FUNCTION." AND THEN
16 GIVES A REFERENCE TO A PATENT, AN IBM PATENT.

17 Q. DOES THE IBM PATENT THAT WE'RE LOOKING AT HERE,
18 EXHIBIT U-18, ALSO REFER TO USING A SEPARATE BUTTON
19 INSTEAD OF A MENU FOR INITIATING THIS FUNCTION?

20 A. I CAN'T RECALL.

21 Q. LET'S TAKE A LOOK AT -- LOOK FURTHER DOWN IN COLUMN
22 8 AND CONTINUE ON TO COLUMN 9. YOU HAVE THE HARD COPY
23 UP THERE AS WELL. DO YOU SEE ANYTHING IN THE PATENT
24 REFERRING TO USING A BUTTON INSTEAD OF A MENU ITEM?

25 A. YES, I DO. IT SAYS AT THE BOTTOM OF COLUMN 8, "AS

1 AN ALTERNATIVE TO MENU TASK SELECTION THE TEXT
2 PROCESSING SYSTEM COULD BE PROVIDED WITH A SEPARATE KEY
3 BUTTON TO INVOKE EACH OF THE FUNCTIONS THAT THE SYSTEM
4 IS CAPABLE OF PERFORMING.

5 MR. SCHERKENBACH: GO BACK TO THE CLAIM CHART,
6 PLEASE.

7 Q. IS IT APPROPRIATE IN YOUR OPINION TO CHECK THE BOX
8 FOR THE IBM PATENT AS DISCLOSING THE INPUT DEVICE
9 LIMITATION OF CLAIM 1?

10 A. YES, IT IS.

11 Q. HOW ABOUT UPON A SINGLE ENTRY OF THE EXECUTE
12 COMMAND BY MEANS OF THE INPUT DEVICE, IS THAT DESCRIBED
13 IN THE IBM PATENT?

14 A. YES, IT IS. SINCE WE JUST TALKED ABOUT EITHER A
15 BUTTON OR A MENU SELECTION, THE QUESTION IS WHAT
16 HAPPENS AFTER YOU CHOOSE THAT FUNCTION. AFTER THAT, IT
17 AUTOMATICALLY DETECTS THE CONFUSING WORDS AND DOES THE
18 PROCESS OF LOOKING UP THE DEFINITIONS AND THE
19 ALTERNATIVE WORDS AND DOES THE DISPLAY. SO IT DOES ALL
20 OF THOSE ACTIONS AS REQUIRED OF THE SINGLE EXECUTE.

21 THE COURT: WE'LL HAVE TO STOP THERE FOR THE
22 AFTERNOON RECESS, MR. SCHERKENBACH. MEMBERS OF THE
23 JURY MAY RETURN TO THE JURY ROOM.

24 (JURY EXCUSED)

25 THE COURT: YOU MAY STEP DOWN, DR. CROFT.

1 (WITNESS EXCUSED)

2 THE COURT: I HAVE A CONFERENCE AT 4:00 O'CLOCK,
3 SO WE'LL TAKE ONLY A TEN-MINUTE RECESS AND WE'LL BE
4 ADJOURNING A LITTLE BIT EARLY TODAY. COURT WILL BE IN
5 RECESS.

6 (AFTERNOON RECESS 3:15 TO 3:28 P.M.)

7 THE COURT: BRING THE JURY IN, PLEASE.

8 (JURY PRESENT)

9 THE COURT: PLEASE BE SEATED, LADIES AND
10 GENTLEMEN.

11 MR. SCHERKENBACH, YOU MAY CONTINUE.

12 MR. SCHERKENBACH: THANK YOU, YOUR HONOR.

13 Q. DR. CROFT, WHEN WE BROKE, WE WERE TALKING ABOUT THE
14 SINGLE ENTRY OF THE EXECUTE COMMAND AND WHERE YOU FOUND
15 THAT, IF ANYWHERE, IN THE IBM PATENT. DO YOU RECALL
16 THAT?

17 A. YES, I DO.

18 Q. HAVE YOU FOUND A SPOT OR TWO THAT RELATES TO THE
19 SINGLE ENTRY OF THE EXECUTE COMMAND?

20 A. WELL, WE JUST TALKED ABOUT THE MENU SELECTION OR
21 THE BUTTON, AND EITHER OF THOSE THINGS STARTS THIS
22 ENTIRE PROCESS, AND THAT'S DESCRIBED IN MANY PLACES IN
23 THE PATENT.

24 Q. CAN YOU TAKE A LOOK, FOR EXAMPLE, IN THE FIRST PART
25 OF COLUMN 9 AND TELL US WHETHER ANYTHING THERE -- IF

1 THERE'S ANY INFORMATION THERE THAT YOU RELY ON?

2 A. THIS DESCRIBES PART OF THE PROCESS, WHICH IS ONCE
3 INVOKED, THE CONTEXTUAL ERROR ROUTINE SEQUENTIALLY
4 SCANS EACH WORD IN THE TEXT DOCUMENT AND COMPARES THE
5 WORDS TO THE CONFUSABLE WORDS STORED IN THE
6 CONFUSABLE-WORD MEMORY. AND THEN IT ACTUALLY POINTS TO
7 ANOTHER ONE OF THOSE PSEUDO-CODE DESCRIPTIONS OF THE
8 PROCESS. SO THIS IS ONE OF THE STEPS THAT HAPPENS
9 AFTER THE SINGLE EXECUTE COMMAND.

10 Q. DOES THE SINGLE ENTRY OF THE EXECUTE COMMAND IN THE
11 IBM PATENT REQUIRE ANY USER SELECTION OF TEXT?

12 A. NO, IT DOESN'T.

13 Q. AND IF WE GO BACK TO -- WELL, ACTUALLY, LET ME SHOW
14 YOU FIGURE 5 FROM THE IBM PATENT, IT'S UP ON YOUR
15 SCREEN. DO YOU RECOGNIZE IT?

16 A. YES, THIS IS THE OTHER FIGURE I WAS REFERRING TO
17 EARLIER.

18 Q. SO LOOKING AT FIGURE 5, CAN YOU IDENTIFY FOR US
19 WHAT SOME EXAMPLES OF THE FIRST INFORMATION ARE IN THE
20 IBM PATENT?

21 A. WELL, IN FACT, YOU CAN SEE THAT THEY HAVE BOLDED
22 HERE, "AFFECT," "CONFIDANT" AND "COURSE" FOR OF COURSE.

23 Q. SO THOSE BOLDED WORDS ARE EXAMPLES OF FIRST
24 INFORMATION?

25 A. THAT'S RIGHT, THEY ARE WORDS THAT COULD BE CONFUSED

1 WITH OTHER WORDS.

2 Q. LET'S GO BACK TO OUR CLAIM CHART, PLEASE. WE'LL
3 TALK ABOUT TWO ELEMENTS HERE. THE SINGLE ENTRY OF THE
4 EXECUTE COMMAND, IS IT YOUR OPINION THAT WE CAN CHECK
5 THAT BOX FOR THE IBM PATENT?

6 A. YES, YOU CAN.

7 Q. AND THE ANALYZING ELEMENT, TELL US AGAIN WHAT THAT
8 IS IN THE IBM PATENT?

9 A. WELL, IT'S THIS PROCESS OF FIRST THEY SCAN THE
10 TEXT, COMPARING IT TO A LIST OF CONFUSABLE WORDS. IF
11 IT FINDS A WORD THAT'S ON THIS LIST, THEN IT FURTHER
12 DOES SOME MORE ANALYSIS, LOOKING AT THE WORDS AROUND
13 THAT WORD. AND USING SOME RULES ABOUT PROPER USE OF
14 WORDS, ETC., IT IDENTIFIES WHETHER THAT WORD IS,
15 INDEED, A CONFUSABLE WORDS AS THEY CALL IT. SO THAT'S
16 THE ANALYSIS PROCESS.

17 Q. IS IT APPROPRIATE, IN YOUR OPINION, TO CHECK THE
18 BOX FOR THE ANALYZING LIMITATION FOR THE IBM PATENT?

19 A. YES, IT IS.

20 Q. IF WE GO ON TO THE SEARCHING LIMITATION. I BELIEVE
21 YOU ALREADY TOLD US WHAT THE RECORD RETRIEVAL PROGRAM
22 IS; IS THAT RIGHT?

23 A. THAT'S RIGHT, I POINTED TO A TABLE.

24 Q. WHAT IS THE SECOND INFORMATION IN THE IBM PATENT?

25 A. THE SECOND INFORMATION ARE THE LIST OF THE

1 ALTERNATIVE WORDS AND THEIR DEFINITION, BOTH OF WHICH
2 ARE STORED IN FILES THAT NEED TO BE SEARCHED BY THE
3 RECORD RETRIEVAL PROGRAM.

4 Q. IS THAT SHOWN IN FIGURE 6 OF THE PATENT, THE SECOND
5 INFORMATION?

6 A. THE SECOND INFORMATION IS SHOWN, DISPLAYED IN THIS
7 BOX WITH THE DASHED MARKS AROUND IT, AROUND THERE.

8 Q. SO THE DOTTED BOX?

9 A. RIGHT.

10 Q. SO IS IT APPROPRIATE THEN, IN YOUR OPINION, TO
11 CHECK THE BOX FOR THE IBM PATENT RELATING TO THE
12 SEARCHING LIMITATION?

13 A. IT IS.

14 Q. AND IF WE GO TO THE LAST LIMITATION, WHICH TALKS
15 ABOUT DISPLAYING OR INSERTING SECOND INFORMATION OR
16 COMPLETING THE FIRST INFORMATION, DID YOU FIND THAT IN
17 THE IBM PATENT?

18 A. YES, I DID. THE LAST FIGURE CLEARLY SHOWS THAT THE
19 INFORMATION THAT'S FOUND IN THESE FILES OF DEFINITIONS
20 ARE DISPLAYED TO THE USER IN THAT BOX WITH THE DASHED
21 MARKS AROUND IT.

22 Q. LET'S JUST PUT THAT ON AGAIN QUICKLY.

23 DOES FIGURE 6 SHOW THE DISPLAY OF SECOND
24 INFORMATION?

25 A. YES, IT DOES.

1 Q. CAN YOU LOOK AT THE COVER PAGE OF THE IBM PATENT,
2 PLEASE, DR. CROFT. DOES IT SHOW A DATE?

3 A. IT SHOWS TWO DATES. THE FILING DATE AND THE
4 EVENTUAL DATE OF THE PATENT.

5 Q. WHAT IS THE FILING DATE?

6 A. DECEMBER 10, 1985.

7 Q. WHEN DID THIS PATENT ISSUE?

8 A. JUNE 16 --

9 MR. HAYES: YOUR HONOR, WE'LL STIPULATE IT'S
10 PRIOR ART TO MOVE THIS ALONG.

11 MR. SCHERKENBACH: OKAY, FINE, WE'LL MOVE ON.

12 Q. NOW, DR. CROFT, DID YOU ALSO CONSIDER WHETHER THE
13 ASSERTED -- THE OTHER ASSERTED CLAIMS, THE DEPENDENT
14 CLAIMS WERE VALID?

15 A. YES, YOU HAVE TO CONSIDER EACH CLAIM AS A SEPARATE
16 INVENTION, CONSIDER THEM AS WELL.

17 Q. AND WHAT WERE YOUR CONCLUSIONS WITH RESPECT TO THE
18 DEPENDENT CLAIMS?

19 A. I FOUND THAT ALL OF THEM WERE INVALID WITH RESPECT
20 TO THE PRIOR ART THAT I HAVE BEEN DISCUSSING.

21 MR. SCHERKENBACH: CAN I HAVE THE ELMO.

22 Q. LET'S TALK FIRST ABOUT CLAIM 2. FIRST OF ALL, DO
23 YOU UNDERSTAND CLAIM 2 TO REQUIRE EVERYTHING THAT'S IN
24 CLAIM 1 PLUS SOME ADDITIONAL LIMITATIONS?

25 A. YES, I DO. THE FIRST SENTENCES SAYS, THE METHOD OF

1 CLAIM 1, WHICH MEANS ALL THE LIMITATIONS OF CLAIM 1,
2 FURTHER COMPRISING ONE OF THE FOLLOWING STEPS, MEANING
3 IT HAS TO ALSO INCLUDE ONE OF THE FOLLOWING STEPS.

4 Q. AND IF I CAN GET THE WHOLE CLAIM ON THE SCREEN
5 HERE. DID YOU FIND IN THE PRIOR ART ONE OF THE
6 FOLLOWING STEPS THAT ARE LISTED THERE IN CLAIM 2?

7 A. I DID. FOR EXAMPLE, IN COREL QUICKCORRECT,
8 QUICKCORRECT CORRECTS THE FIRST -- THIS IS THE FIRST
9 LINE ON COLUMN 11 -- CORRECTS THE FIRST INFORMATION IN
10 THE DOCUMENT USING THE SECOND INFORMATION. REMEMBER,
11 QUICKCORRECT, WE FIND THE REPLACEMENT TEXT AND YOU
12 REPLACE THAT, THE INITIAL TEXT WITH THE "ASAP," WITH
13 THE "AS SOON AS POSSIBLE."

14 Q. LET ME JUST MAKE SURE WE UNDERSTAND WHICH ELEMENT
15 YOU FOUND. DID YOU SAY IT IS THE CORRECTING PART OF
16 CLAIM 2?

17 A. THAT'S CORRECT.

18 Q. DO YOU UNDERSTAND CLAIM 2 TO REQUIRE THE PRIOR ART
19 JUST TO SHOW ONE OF THE PARAGRAPHS THAT ARE ADDED HERE?

20 A. YES. IN ADDITION TO THE LIMITATIONS OF CLAIM 1,
21 THAT'S RIGHT.

22 Q. AND WHAT IS IT IN WORDPERFECT QUICKCORRECT THAT
23 SHOWS CORRECTING THE FIRST INFORMATION IN THE DOCUMENT
24 USING THE SECOND INFORMATION?

25 A. IT IS THE PROCESS BY WHICH THE TEXT IN THE

1 DOCUMENT, THE ASAP, FOR EXAMPLE, IS REPLACED BY THE
2 EXPANSION FORM IN THE QUICKCORRECT FILE, THE SECOND
3 INFORMATION THAT'S IN THE QUICKCORRECT FILE. SO IT IS
4 REPLACING THE FIRST INFORMATION, WHICH IS "ASAP," AND
5 CORRECTING IT USING THE SECOND INFORMATION, THE AS SOON
6 AS POSSIBLE.

7 Q. LET'S TALK ABOUT THE NEXT ASSERTED DEPENDENT CLAIM,
8 CLAIM 7. CAN YOU SEE IT THERE ON THE SCREEN?

9 A. YES, I CAN.

10 Q. WHAT DO YOU UNDERSTAND CLAIM 7 TO REQUIRE?

11 A. ONCE AGAIN, THE METHOD OF CLAIM 1, THE WHOLE
12 LIMITATIONS OF CLAIM 1 FURTHER COMPRISING SO THERE IS
13 AN ADDITIONAL LIMITATION, PROVIDING A USER THE OPTION
14 OF MAKING CHANGES TO THE SECOND INFORMATION DIRECTLY IN
15 THE INFORMATION SOURCE.

16 Q. DID YOU FIND THIS LIMITATION IN THE PRIOR ART?

17 A. YES, I DID.

18 Q. WHICH PIECES OF PRIOR ART?

19 A. WELL, IN THE QUICKCORRECT, AGAIN, I CAN CHANGE THE
20 SECOND INFORMATION, I CAN GO INTO THAT FILE I SHOWED
21 YOU AND CHANGE THE "AS SOON AS POSSIBLE" TO SOMETHING
22 ELSE. IN MICROSOFT WORD I'M ALLOWED TO ADD THINGS TO
23 THE DICTIONARY WHICH WILL AFFECT WHICH THINGS I'VE
24 VIEWED AS MISSPELLINGS.

25 Q. YOU SAID MICROSOFT WORD, DID YOU MEAN --

1 A. OH, SORRY --

2 Q. -- COREL WORDPERFECT?

3 A. YES. IN COREL WORDPERFECT, THE SPELLCHECK, I CAN
4 CHANGE THOSE WORD LISTS, THE DICTIONARIES WITH A
5 COMMAND THAT'S ON THE SCREEN, SAYING ADD TO THE
6 DICTIONARY. AND LIKE MOST SPELLCHECKERS, IT WILL ADD
7 THAT WORD AND FROM THEN IT IS NO LONGER A MISSPELLING.

8 Q. USING WORDPERFECT SPELLCHECKER FIRST, CAN YOU JUST
9 SHOW US QUICKLY AN EXAMPLE OF HOW A USER CAN MAKE
10 CHANGES TO THE SECOND INFORMATION? AND AGAIN, EXPLAIN
11 THE STEPS YOU'RE TAKING, PLEASE, AS YOU DO IT.

12 A. I'VE GOT MY SAME DOCUMENT HERE, WHICH HAPPENS TO
13 HAVE A SPELLING ERROR IN IT SO I CAN JUST RUN IT. AND
14 ONCE AGAIN, IT HAS DONE THOSE QUICKCORRECT
15 REPLACEMENTS, BUT ALSO IT FOUND THE SPELLING ERROR AT
16 THE END. AND IT HAS A SUGGESTION THERE, I CLICK
17 REPLACE. AND -- SORRY, THAT WAS THE WRONG THING. I'LL
18 HAVE TO DO THAT AGAIN, I'M SORRY. WE'LL GO BACK TO
19 WHAT IT WAS.

20 Q. AND AGAIN, DESCRIBE FOR THE RECORD WHAT YOU ARE
21 DOING.

22 A. SO I CLICKED ON THE SPELLCHECK BUTTON WHICH INVOKED
23 BOTH QUICKCORRECT AND THE SPELLCHECKER. THE
24 SPELLCHECKER HAS SUGGESTED A CHANGE TO WHAT A -- THE
25 RIGHT WAY TO SPELL TOMORROW. BUT I CAN ADD THAT WORD

1 TO THE DICTIONARY, IN WHICH CASE IT DOES NOT CORRECT
2 THE ADDRESS, IT HAS NOW BECOME A VALID WORD, IT HAS
3 CHANGED THAT DICTIONARY WHICH IS THE SECOND -- THE
4 INFORMATION IN THE INFORMATION SOURCE.

5 Q. CAN YOU SHOW US AN EXAMPLE FROM WORDPERFECT
6 QUICKCORRECT OF HOW A USER CAN MAKE CHANGES TO THE
7 SECOND INFORMATION DIRECTLY IN THE INFORMATION SOURCE?

8 A. YES, I THINK I CAN. IF I GO DOWN TO QUICKCORRECT
9 HERE, I CAN -- LIKE IF I DIDN'T LIKE THE FACT THAT
10 "ASAP" WAS BEING REPLACED ALL THE TIME, I CAN JUST
11 DELETE THAT ENTRY. SO, NOW, I'VE MODIFIED THE
12 INFORMATION SOURCE, AND I CAN ADD A NEW ENTRY IF I WANT
13 TO.

14 Q. LET'S GO ON TO THE NEXT DEPENDENT CLAIM, CLAIM 13.
15 CAN WE BLOW THAT UP, PLEASE.

16 WHAT DO YOU UNDERSTAND CLAIM 13 OF THE PATENT TO
17 ADD TO CLAIM 1.

18 A. ONCE AGAIN, THE LIMITATIONS OF CLAIM 1 AND THE
19 ADDITIONAL LIMITATION OF THE STEP OF INDICATING WHICH
20 PART OF INFORMATION IN SAID DOCUMENT IS SAID FIRST
21 INFORMATION.

22 Q. WHAT DOES THAT MEAN, INDICATING?

23 A. WELL, ACTUALLY, THE PATENT DOESN'T SAY ANYTHING
24 ABOUT WHAT IT MEANS. BUT WHAT I'M ASSUMING IT MEANS IS
25 HIGHLIGHTING OR BOLDING IN SOME WAY.

1 Q. DID YOU FIND EXAMPLES IN THE PRIOR ART OF THE FIRST
2 INFORMATION IN THE DOCUMENT BEING HIGHLIGHTED OR BOLDED
3 IN SOME WAY?

4 A. I FOUND A NUMBER OF EXAMPLES IN THE PRIOR ART THAT
5 WE'VE DISCUSSED.

6 Q. CAN YOU GIVE US A FEW OF THOSE?

7 A. YES. FOR EXAMPLE, THE COREL WORDPERFECT
8 SPELLCHECK, I SHOWED YOU IT HIGHLIGHTS THE MISSPELLED
9 WORDS THAT IT DISCOVERS, THEY WERE THE FIRST
10 INFORMATION AND THEY WERE HIGHLIGHTED IN ADDITION TO
11 DISPLAYING THE SECOND INFORMATION, WHICH WAS THE
12 POTENTIAL CORRECTIONS. BUT THE FIRST INFORMATION WAS
13 HIGHLIGHTED IN THE DOCUMENT. THE IBM PATENT, WE JUST
14 DISCUSSED, REMEMBER I SHOWED YOU THOSE TWO FIGURES
15 WHERE THE WORDS WERE BOLDED, THAT'S ANOTHER WAY OF
16 INDICATING WHICH WORDS ARE FIRST INFORMATION. IN OTHER
17 WORDS, WHICH WERE THE CONFUSABLE WORDS, THEY WERE THE
18 ONES THAT WERE BOLDED OR INDICATED.

19 Q. LET'S JUST LOOK AT THAT FIGURE AGAIN AND REMIND THE
20 JURY, FIGURE 5 OF THE IBM PATENT. SO WHAT IN THIS
21 FIGURE, IN YOUR VIEW, IS INDICATING THE FIRST
22 INFORMATION?

23 A. THE BOLDING THERE, THOSE THREE WORDS THAT WE'VE
24 BEEN LOOKING AT; AFFECT, CONFIDANT AND COURSE.

25 Q. IS THERE ALSO A DESCRIPTION IN THE BODY OF THE IBM

1 PATENT ABOUT SOMEHOW IDENTIFYING OR HIGHLIGHTING WHAT
2 THE FIRST INFORMATION IS?

3 A. YES, IT'S MENTIONED A COUPLE OF TIMES IN THE
4 FLAGGING THEM AND WORDS LIKE THAT.

5 Q. DOES THE CLARIS EMAILER PRODUCT WITH APPLE DATA
6 DETECTORS DO ANY HIGHLIGHTING OR INDICATING OF THE
7 FIRST INFORMATION?

8 A. IT DOES A DIFFERENT SORT OF INDICATING, IN THAT IT
9 CERTAINLY DISPLAYS THE FIRST INFORMATION AS THE FIRST
10 ROW OF THE -- OF THE HIERARCHICAL MENU DISPLAY.

11 Q. LET'S GO ON TO CLAIM 14. CAN I HAVE THE ELMO,
12 PLEASE.

13 WHAT DO YOU UNDERSTAND CLAIM 14 TO ADD, IF
14 ANYTHING, TO CLAIM 1?

15 A. I DON'T HAVE ANYTHING ON THE SCREEN RIGHT NOW. I
16 THINK I PUSHED THE WRONG BUTTON. ALL SET.

17 SO THE METHOD OF CLAIM 1, AGAIN, THE LIMITATIONS
18 OF CLAIM 1, AND THEN THE ADDITIONAL LIMITATION OF THE
19 STEP OF AUTOMATICALLY INTERPRETING WHICH PART OF
20 INFORMATION IN SAID DOCUMENT IS SAID FIRST INFORMATION.

21 Q. WHAT DOES THAT MEAN TO YOU?

22 A. AS A PRACTICAL MATTER, I DON'T THINK IT ADDS
23 ANYTHING TO CLAIM 1. BECAUSE CLAIM 1 ALREADY REQUIRES
24 UPON THE SINGLE ENTRY OF THE EXECUTE COMMAND,
25 AUTOMATICALLY DETERMINING WHICH, DOING THE ANALYSIS AND

1 DETERMINING AND LOOKING FOR FIRST INFORMATION. THAT
2 WHOLE PROCESS AFTER THE UPON THE SINGLE EXECUTE OF THE
3 -- SINGLE ENTRY OF THE EXECUTE COMMAND IS AN AUTOMATIC
4 PROCESS. AND IT IDENTIFIES FIRST INFORMATION, SO I
5 DON'T THINK THIS CLAIM ADDS ANYTHING TO CLAIM 1.

6 Q. WELL, TO THE EXTENT IT DOES ADD ANYTHING TO CLAIM
7 1, WHAT IS YOUR VIEW AS TO WHICH OF THE PRIOR ART
8 REFERENCES WE'VE DISCUSSED TODAY, WOULD ALSO SHOW THE
9 ADDITION OF CLAIM 14, THE ADDITIONAL INFORMATION IN
10 CLAIM 14?

11 A. WELL, ALL OF THE PRIOR ART WE'VE LOOKED AT, ALL
12 FIVE PIECES AUTOMATICALLY IDENTIFY FIRST INFORMATION IN
13 THE DOCUMENT. SO IN MY OPINION, THEY ALL SATISFY THIS
14 CLAIM LIMITATION.

15 Q. LET'S GO ON TO CLAIM 16. WHAT DOES THAT ADD?

16 A. IT'S REQUIRING A STORAGE MEDIUM FOR STORING A
17 PROGRAM PERFORMING THE STEPS RECITED IN ONE OF CLAIMS 1
18 TO 14, AND SO ALL OF THOSE CLAIMS CONTAIN THE
19 LIMITATIONS OF CLAIM 1. AND IN ADDITION, YOU HAVE TO
20 HAVE A STORAGE MEDIUM FOR STORING A PROGRAM FOR
21 PERFORMING THE STEPS.

22 AND SINCE PROGRAMS HAVE TO BE STORED SOMEWHERE
23 TO BE USED IN A COMPUTER, THIS ALSO, TO ME, DOESN'T ADD
24 MUCH. AND TO THE EXTENT IT DOES, ALL OF THE PRIOR ART
25 I'VE DISCUSSED SATISFIES THIS LIMITATION.

1 Q. DID YOU FIND IN EACH OF THE PIECES OF PRIOR ART
2 THAT YOU HAVE RELIED ON, EITHER AN EXPLICIT OR INHERENT
3 REFERENCE TO THE STORAGE MEDIUM OF SOME SORT FOR THE
4 PROGRAM THAT PERFORMED THE METHOD OF CLAIM 1?

5 A. YES, I DID.

6 Q. LET'S GO ON TO THE LAST CLAIM, CLAIM 68. WE'LL
7 BLOW THIS UP FOR YOU.

8 WHAT, IF ANYTHING, DO YOU UNDERSTAND CLAIM 68 TO
9 ADD TO CLAIM 2?

10 A. THIS IS ONE OF A SERIES OF CLAIMS WHICH COMBINED
11 SOME OF THE EARLIER CLAIMS. SO THIS ONE IS THE METHOD
12 OF METHOD OF CLAIM 2, WHICH ALSO INCLUDES THE
13 LIMITATIONS OF CLAIM 1, WITH ADDITIONAL REQUIREMENT OF
14 SATISFYING THE STEP OF AUTOMATICALLY INTERPRETING WHICH
15 PART OF THE INFORMATION IN SAID DOCUMENT IS SAID FIRST
16 INFORMATION, WHICH IS THE ONE WE JUST LOOKED AT AS
17 NUMBER 14.

18 SO IT'S REALLY THE COMBINATION OF 2 AND 14. AND
19 AS I SAID, IN MY OPINION, ALL OF THE PRIOR ART
20 SATISFIES 14. AND SO THE QUICKCORRECT PRIOR ART, WHICH
21 I SAID EARLIER SATISFIED CLAIM 2, WOULD ALSO SATISFY
22 THIS CLAIM.

23 Q. SO IN YOUR OPINION, DR. CROFT, TO SUM UP, ARE ALL
24 SEVEN OF ARENDI'S ASSERTED CLAIMS INVALID AS
25 ANTICIPATED?

1 A. THAT'S MY OPINION.

2 Q. IS THERE STILL OTHER PRIOR ART IN ADDITION TO THE
3 PRIOR ART WE'VE DISCUSSED TODAY THAT YOU THINK ALSO
4 ANTICIPATES ARENDI'S ASSERTED CLAIMS?

5 MR. HAYES: OBJECTION. IT'S NOT PART OF THE
6 CASE.

7 THE COURT: YOU MAY ANSWER THAT YES OR NO,
8 EITHER THERE IS OR IS NOT. ARE YOU INTENDING TO -- IF
9 THE ANSWER IS YES, MR. SCHERKENBACH, ARE YOU INTENDING
10 TO PRESENT SOME ADDITIONAL EVIDENCE?

11 MR. SCHERKENBACH: NO.

12 THE COURT: I'LL SUSTAIN THE OBJECTION, THEN.

13 MR. SCHERKENBACH: I HAVE NO FURTHER QUESTIONS,
14 THEN.

15 MR. HAYES: I PROBABLY CAN WIND HIM UP IN ELEVEN
16 MINUTES, JUDGE.

17 CAN YOU, FRANK, WILL YOU PUT ON THIS CLAIM CHART
18 THING WHERE YOU HAD ALL THE CHECKMARKS. CAN YOU
19 SOMEHOW POP THAT ON.

20 MR. SCHERKENBACH: SURE.

21 CROSS-EXAMINATION

22 BY MR. HAYES:

23 Q. SIR, DO YOU KNOW WHAT ANTICIPATION MEANS?

24 A. I UNDERSTAND WHAT IT MEANS.

25 Q. YOU HAVE TOLD THE JURY CERTAIN THINGS ANTICIPATE,

1 SO YOU MUST HAVE IN YOUR BRAIN AN UNDERSTANDING OF WHAT
2 THE LAW REQUIRES FOR ANTICIPATION; CORRECT?

3 A. I DO.

4 Q. AND TO ANTICIPATE, YOU HAVE TO HAVE EACH AND EVERY
5 ELEMENT CONTAINED IN A SINGLE PIECE OF PRIOR ART
6 ARRANGED IN THE SAME MANNER TO ACCOMPLISH THE SAME
7 FUNCTION; CORRECT?

8 A. I BELIEVE THAT'S CORRECT, YES.

9 Q. AND IF WE LOOK AT THIS -- DOES THE JURY HAVE THIS
10 DISPLAY OF BOXES -- IF WE LOOK AT THIS DISPLAY OF BOXES
11 YOU HAVE HERE, IF ANY ONE OF -- LET'S TAKE ADDRESSMATE
12 PLUS TO BEGIN WITH, IF ANY ONE OF THOSE BOXES IS
13 MISSING, JUST ONE, THERE IS NO ANTICIPATION AS A MATTER
14 OF LAW; CORRECT?

15 A. THAT'S CORRECT.

16 Q. SO IF, IN FACT, THE DESIGNER OF ADDRESSMATE
17 TESTIFIES THAT ONE OF THOSE BOXES IS MISSING, THEN
18 THERE WOULD BE NO ANTICIPATION; CORRECT?

19 A. NO, I DON'T AGREE WITH THAT.

20 Q. WHO IS THE DESIGNER OF ADDRESSMATE?

21 A. I BELIEVE IT WAS DAVID BLOCK.

22 Q. AND CERTAINLY MR. BLOCK KNOWS MORE ABOUT HOW
23 ADDRESSMATE WORKS THAN YOU; WOULD THAT BE FAIR?

24 A. I THINK THAT WOULD BE FAIR, SINCE HE WROTE IT, YES.

25 Q. YES. NOW, ON APPLE DATA DETECTORS, IF, IN FACT,

1 THE INDIVIDUAL WITH THE CLARIS E-MAIL THING, IF THE
2 INDIVIDUAL WHO DESIGNED THAT, MR. MILLER, TESTIFIED
3 THAT ONE OF THESE ELEMENTS IS MISSING, THEN THERE WOULD
4 BE NO ANTICIPATION; CORRECT?

5 A. I DON'T BELIEVE HE TESTIFIED ABOUT THAT. AND I
6 THINK IT'S MY JOB TO DECIDE WHETHER THE PRIOR ART
7 ANTICIPATES THE PATENT.

8 Q. YOUR JOB. WHO DO YOU THINK KNOWS MORE ABOUT HOW
9 APPLE DATA DETECTORS WORK, YOU OR MR. MILLER, WHO
10 DESIGNED IT?

11 A. HE KNOWS MORE ABOUT WHAT GOES ON UNDER THE HOOD,
12 BUT I DIDN'T RELY ON THAT IN MY ANALYSIS.

13 Q. SO IF HE TESTIFIES UNDER THE HOOD ONE OF THESE
14 ELEMENTS IS MISSING, THEN THAT'S -- IT'S MISSING, HE
15 WOULD KNOW MORE WHAT IS UNDER THE HOOD IN THE PRODUCT
16 THAN YOU; CORRECT?

17 A. WELL, I DIDN'T HEAR ANYTHING IN HIS TESTIMONY --

18 Q. EXCUSE ME, JUST -- PLEASE. HE WOULD KNOW MORE OF
19 WHAT'S UNDER THE HOOD THAN YOU; YES OR NO?

20 A. IN THE SENSE THAT AS I'VE ALREADY AGREED, THAT HE
21 KNOWS MORE ABOUT WHAT'S GOING ON IN THE INTERNALS OF
22 APPLE DATA DETECTORS.

23 Q. THAN YOU?

24 A. ABSOLUTELY.

25 Q. OKAY. NOW, ALSO COULD YOU LOOK AT CLAIM 13?

1 BEFORE I START, I'M GOING TO TRY TO PICK UP ON A FEW
2 TIDBITS IN WHAT YOU SAID. LOOK AT CLAIM 13. I THINK I
3 HAVE A BLOWUP OF THAT ONE. DOES EVERYBODY HAVE THAT?
4 OKAY.

5 DO YOU HAVE THAT, SIR?

6 A. YES, I DO.

7 Q. IT SAYS, THE METHOD FURTHER COMPRISING THE STEP OF
8 FIRST INDICATING WHICH PART OF FIRST INFORMATION IN
9 SAID DOCUMENT IS FIRST INFORMATION. DO YOU SEE THAT?

10 A. WELL, THAT'S NOT EXACTLY WHAT IT SAYS, BUT, YES, I
11 SEE THE CLAIM, YES.

12 Q. IT SAYS "THE METHOD OF CLAIM 1 FURTHER COMPRISING
13 THE STEP OF INDICATING WHICH PART OF INFORMATION IN
14 SAID DOCUMENT IS FIRST INFORMATION," RIGHT?

15 A. THAT'S CORRECT.

16 Q. FIRST INFORMATION IS TYPICALLY, IF I TYPE IN "ATLE
17 HEDLOY," THAT'S FIRST INFORMATION IN THE DOCUMENT;
18 CORRECT?

19 A. THAT'S ONE EXAMPLE. AS I SAID, IT'S -- THE CLAIM
20 DOESN'T TALK ABOUT NAMES AND ADDRESSES.

21 Q. EXCUSE ME, THAT WOULD BE AN EXAMPLE, CORRECT?

22 A. THAT'S ONE POSSIBLE TYPE OF FIRST INFORMATION,
23 THAT'S RIGHT.

24 Q. I UNDERSTAND THERE CAN BE A MILLION OF THEM. BUT
25 THE QUESTION IS IF I TYPE IN "ATLE HEDLOY" OR YOUR

1 NAME, IT WOULD BE FAIR TO SAY THAT THAT IS FIRST
2 INFORMATION; CORRECT?

3 A. IN THE ONE-BUTTON PRODUCT YOU'RE TALKING ABOUT? IN
4 THE -- WITH RESPECT TO THE PATENT, IT CERTAINLY IS WITH
5 RESPECT TO THE PATENT, YES.

6 Q. THAT'S WHAT WE ARE TALKING ABOUT, THE PATENT HERE.

7 A. YES.

8 Q. NOW, IT SAYS, "FURTHER COMPRISING THE STEP OF
9 INDICATING WHICH PART OF INFORMATION IN SAID DOCUMENT
10 IS FIRST INFORMATION." DOES IT SAY THERE THAT IN THAT
11 STEP THE INDICATION HAS TO BE AUTOMATIC?

12 A. I BELIEVE IT ADDS A STEP TO THE OTHER STEPS THAT
13 WERE IN CLAIM 1.

14 Q. IT DOESN'T SAY "AUTOMATICALLY INDICATING," IT SAYS
15 "INDICATING"; RIGHT?

16 A. THAT'S RIGHT.

17 Q. AND WHEN WE'RE LOOKING AT THE DEPENDENT CLAIM 13,
18 IT SAYS "FURTHER COMPRISING THE STEPS OF," THAT STEP
19 THAT'S PUT IN 13 DOES NOT NECESSARILY HAVE TO GO IN ANY
20 PARTICULAR ORDER IN THE CLAIM; CORRECT?

21 MR. SCHERKENBACH: OBJECTION, YOUR HONOR. IT
22 CALLS FOR A LEGAL CONCLUSION.

23 THE COURT: OVERRULED. I WILL INSTRUCT YOU ON
24 WHAT THE LAW IS, WHAT'S SAID. IT IS VERY DIFFICULT
25 HERE IN LIGHT OF THE OPINIONS THAT HAVE BEEN EXPRESSED

1 BY BOTH EXPERTS TO SEPARATE LAW FROM FACTS, SO I'M
2 GOING TO ALLOW THIS QUESTION TO BE ASKED AND THIS
3 WITNESS TO ANSWER IT, BUT IF I TELL YOU ANYTHING
4 DIFFERENT IN MY INSTRUCTIONS TO YOU, YOU OUGHT TO BASE
5 YOUR DECISION ON MY EXPLANATION AND NOT ON ANY
6 WITNESS'S EXPLANATION OR WHAT THE LAWYERS MAY SUGGEST.

7 READ THE QUESTION BACK TO DR. CROFT.

8 (QUESTION READ BACK)

9 THE COURT: AND IF YOU DON'T KNOW THE ANSWER TO
10 ANY OF THESE QUESTIONS, DR. CROFT, YOU CAN SAY SO.

11 A. I GUESS I'M NOT SURE. IT DOESN'T CHANGE MY
12 ANALYSIS FOR INVALIDITY.

13 Q. I JUST ASKED YOU, DO YOU KNOW OR NOT KNOW?

14 A. I'M NOT SURE.

15 Q. NOW, THE NEXT CLAIM SAYS, "THE METHOD OF CLAIM 14
16 FURTHER COMPRISING THE STEP OF AUTOMATICALLY
17 INTERPRETING WHICH PART OF INFORMATION IN THE DOCUMENT
18 IS FIRST INFORMATION."

19 IN THE SMART TAGS' TECHNOLOGY, IF I WRITE THE
20 SENTENCE, "MR. CROFT HAS A GREEN CAR," WHAT WILL BE
21 UNDERLINED AS FIRST INFORMATION IS "MR. CROFT,"
22 ASSUMING WE HAVE THE NAME FEATURE ON; CORRECT?

23 A. IF YOU HAVE THE NAME SMART TAG TURNED ON, THEN,
24 YES, MR. CROFT WILL BE UNDERLINED.

25 Q. AND THAT IS ALL DONE AUTOMATICALLY; CORRECT?

1 A. THAT'S CORRECT.

2 Q. OKAY. JUST LIKE IT SAYS IN CLAIM 14,
3 AUTOMATICALLY; CORRECT?

4 A. CLAIM 14 ALSO INCLUDES ALL THE RESTRICTIONS OF
5 CLAIM 1, WHICH INCLUDES IDENTIFYING THE FIRST
6 INFORMATION AFTER THE SINGLE EXECUTE.

7 Q. WE'LL GET TO ALL OF THAT. BUT IF WE ASSUME CLAIM 1
8 IS INFRINGED, CLAIM 14 IS INFRINGED BASED ON WHAT YOU
9 JUST TOLD ME; CORRECT?

10 A. I DON'T THINK I JUST TOLD YOU THAT, BUT -- I
11 ANSWERED A DIFFERENT QUESTION.

12 Q. IF WE ASSUME MICROSOFT INFRINGES CLAIM 1, THEY WILL
13 ALSO INFRINGE CLAIM 14, BECAUSE SMART TAGS
14 AUTOMATICALLY INTERPRETS WHICH PART OF INFORMATION IN
15 SAID DOCUMENT IS FIRST INFORMATION; ISN'T THAT TRUE?

16 A. WELL, I DON'T THINK THEY INFRINGE CLAIM 1. BUT I
17 GUESS WHAT YOU SAID IS TRUE.

18 Q. NOW, SIR, LET ME JUST START OUT HERE, YOU HAVE
19 TESTIFIED AS AN EXPERT BEFORE FOR MICROSOFT; RIGHT?

20 A. AT A DEPOSITION -- AT DEPOSITIONS.

21 Q. THIS IS NOT THE FIRST TIME YOU EVER WORKED AS AN
22 EXPERT FOR MICROSOFT, THIS CASE; CORRECT?

23 A. THIS IS THE SECOND CASE I'VE WORKED FOR MICROSOFT.

24 Q. THE OTHER CASE WAS THE HYPERPHASE CASE; IS THAT
25 CORRECT?

1 A. THAT'S CORRECT.

2 Q. AND DIDN'T YOU WORK ON A CASE, MORROW V. MICROSOFT?

3 A. I'M WORKING ON THAT ONE.

4 Q. SO THAT WOULD BE WORKING FOR THEM. SO YOU ARE

5 WORKING ON THREE CASES FOR MICROSOFT; CORRECT?

6 A. THAT'S CORRECT.

7 Q. AND IN YOUR ENTIRE CAREER AS TESTIFYING AS AN

8 EXPERT IN A PATENT CASE, YOU HAVE ONLY BEEN INVOLVED IN

9 THREE CASES; CORRECT?

10 A. IN FACT, IN MY ENTIRE CAREER I'VE ONLY TESTIFIED

11 ONCE AT A TRIAL LIKE THIS.

12 Q. I'M NOT SAYING -- I SAID INVOLVED, NOT TESTIFY.

13 ALL THREE PATENT CASES THAT YOU HAVE BEEN INVOLVED IN

14 AS AN EXPERT, ALL HAVE BEEN FOR MICROSOFT; CORRECT?

15 A. THAT'S RIGHT, BECAUSE THEY ARE ALL RELATED TO EACH

16 OTHER AND OVERLAPPED.

17 Q. SO IT'S FAIR TO SAY MICROSOFT IS A PRETTY GOOD

18 CLIENT OF YOURS; CORRECT?

19 A. I WOULDN'T SAY THAT.

20 Q. YOU WOULDN'T. ALL THE MONEY THAT YOU HAVE DERIVED

21 AS AN EXPERT IN TESTIFYING, VIS-A-VIS DEPOSITIONS OR

22 WHATEVER IN PATENT CASES, ALL CAME FROM MICROSOFT;

23 CORRECT?

24 A. THAT'S CORRECT --

25 Q. HOW MUCH MONEY HAVE THEY --

1 THE COURT: JUST A MOMENT. DID YOU FINISH YOUR
2 ANSWER, DR. CROFT?

3 THE WITNESS: YES, I WAS JUST GOING TO SAY --
4 NO, SORRY, I HAVEN'T FINISHED, YOUR HONOR. I WAS
5 SAYING THAT I HAD ONLY BEEN DOING THIS FOR THE LAST
6 YEAR OR SO AND IT JUST HAPPENED THAT ALL THESE CASES
7 CAME ALONG.

8 Q. FROM MICROSOFT?

9 A. THAT'S RIGHT.

10 Q. AND HOW MUCH HAVE THEY PAID TO YOU DATE FOR YOUR
11 WORK AS AN EXPERT?

12 A. IN THIS CASE, ABOUT, SOMEWHAT OVER \$50,000.

13 Q. AND HOW MUCH DO THEY OWE YOU IN THIS CASE?

14 A. I HAVEN'T WORKED IT OUT.

15 Q. APPROXIMATELY?

16 A. ABOUT ANOTHER \$40,000.

17 Q. AND IN THE FIRST YOU SAID 70, THAT'S ABOUT 110
18 GRAND? DID YOU SAY 70, I'M SORRY?

19 A. NO, I SAID, I THINK, ABOUT 55 OR SOMETHING LIKE
20 THAT.

21 Q. SO APPROXIMATELY A HUNDRED. HOW MUCH DID THEY PAY
22 YOU IN HYPERPHASE?

23 A. I DON'T RECALL, BUT IT WAS IN THE \$50,000, \$60,000
24 RANGE, I THINK.

25 Q. AND HOW MUCH HAVE THEY PAID YOU IN MORROW?

1 A. I THINK ABOUT LESS THAN \$10,000.

2 Q. SO WE'RE UP TO ABOUT \$160,000; CORRECT?

3 A. SOMETHING LIKE THAT, YES.

4 Q. THAT'S A PRETTY GOOD CLIENT; IS IT NOT?

5 A. YES. I JUST DON'T CALL THEM CLIENTS, THAT'S ALL.

6 Q. AND, SIR, IS IT TRUE, HOW MUCH ARE YOU BEING PAID

7 AN HOUR BY MICROSOFT FOR YOUR OPINIONS HERE?

8 A. MOST OF THE TIME I SPEND ON THIS CASE I GET PAID MY

9 USUAL RATE OF \$400 AN HOUR. BUT WHILE I'M TESTIFYING

10 IT'S \$500 AN HOUR.

11 Q. SO YOU CHARGE THEM A PREMIUM TO TESTIFY; IS THAT

12 CORRECT?

13 A. THAT'S RIGHT, BECAUSE I FIND IT STRESSFUL.

14 Q. WE ALL DO. I SHOULD USE THAT EXCUSE WITH MY

15 CLIENTS NEXT TIME, YOUR HONOR.

16 NOW, SIR, YOU TALKED ABOUT THE FACT THAT AT

17 U-MASS --

18 THE COURT: DEPENDS ON WHO IS DOING THE

19 QUESTIONING, TOO, DOESN'T IT?

20 MR. HAYES: YES, YOU'RE RIGHT ON THAT ONE,

21 JUDGE.

22 (LAUGHTER)

23 Q. YOU TALKED ABOUT THIS INTELLIGENT INFORMATION THING

24 THAT YOU STARTED AT U-MASS. WHAT WAS THAT CALLED, I'M

25 SORRY?

1 A. THE CENTER FOR INTELLIGENT INFORMATION RETRIEVAL.

2 Q. YES. AND YOU INDICATED THAT YOU HAD 80 OR SO

3 PARTNERS; CORRECT?

4 A. OVER THE LIFE OF THE CENTER WE'VE HAD 80

5 GOVERNMENT/INDUSTRIAL MEMBERS AND PARTNERS, YES.

6 Q. ANY OF THEM INCLUDE MICROSOFT?

7 A. UNFORTUNATELY MICROSOFT HAS NEVER BEEN A MEMBER OF

8 THE CENTER.

9 Q. THEY HAVEN'T?

10 A. NO, THEY HAVEN'T.

11 Q. DO YOU HAVE ANY FRIENDS SITTING AT THE TABLE AT

12 MICROSOFT?

13 A. FRIENDS? WELL, I'VE CERTAINLY GOT TO KNOW THEM

14 DURING THIS CASE.

15 Q. LIKE MR. SINOFSKY?

16 A. NO, I BARELY -- I THINK HE WAS A STUDENT AT U-MASS

17 ONCE, BUT I BARELY KNEW HIM THEN.

18 Q. NOW, YOU TOLD US ABOUT YOUR QUALIFICATIONS AND I

19 HAVE READ YOUR CV. FROM '79 TO '85 YOU WERE AN

20 ASSISTANT PROFESSOR AT U-MASS., CORRECT?

21 A. THAT'S CORRECT.

22 Q. SO BASICALLY AFTER YOU GOT THROUGH YOUR

23 UNDERGRADUATE EDUCATION, GETTING SORT OF EDUCATED, SO

24 TO SPEAK, YOU WENT TO WORK AS AN ASSOCIATE PROFESSOR AT

25 U-MASS., CORRECT?

1 A. WELL, AFTER I FINISHED MY PH.D., NOT MY
2 UNDERGRADUATE EDUCATION.

3 Q. RIGHT.

4 A. THEN I WENT TO WORK AT U-MASS., THAT'S CORRECT.

5 Q. AND DURING THE PERIOD OF TIME FROM '79 TO '85 YOU
6 WERE NEVER EMPLOYED ON A REGULAR BASIS BY A SOFTWARE
7 COMPANY DESIGNING SOFTWARE; CORRECT?

8 A. I DID CONSULTING FOR COMPANIES.

9 Q. THAT'S NOT THE QUESTION. DURING THE PERIOD OF TIME
10 FROM '79 TO '85 YOU WERE NEVER EMPLOYED ON A REGULAR
11 BASIS BY A SOFTWARE COMPANY DESIGNING SOFTWARE;
12 CORRECT?

13 A. THAT WOULD BE CORRECT, YES.

14 Q. NOW, FROM '85 TO '91, YOU WERE AN ASSOCIATE
15 PROFESSOR AT U-MASS., CORRECT?

16 A. THAT'S CORRECT.

17 Q. AND DURING THAT PERIOD OF TIME FROM '85 TO '91, YOU
18 WERE NEVER EMPLOYED FULL TIME BY A SOFTWARE COMPANY
19 DESIGNING SOFTWARE PRODUCTS; CORRECT?

20 A. I WAS NEVER EMPLOYED FULL TIME, NO.

21 Q. AND FROM '91 TO 2000, YOU WERE A PROFESSOR AT
22 U-MASS., CORRECT?

23 A. THAT'S CORRECT.

24 Q. AND DURING THAT TIME, YOU WERE NEVER EMPLOYED ON A
25 FULL-TIME BASIS AT A SOFTWARE COMPANY DESIGNING

1 SOFTWARE; CORRECT?

2 A. YES, I CAN'T HOLD TWO FULL-TIME JOBS, THAT'S

3 CORRECT.

4 Q. EXCUSE ME. IS THE ANSWER YES OR NO, SIR?

5 A. YES, I WAS NOT A FULL-TIME EMPLOYEE.

6 Q. AND FROM 2000 TO THE PRESENT YOU ARE STILL AT

7 U-MASS., CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND DURING THAT PERIOD OF TIME FROM THE YEAR 2000

10 TO THE DAY WE SIT HERE TODAY, EXCUSE ME, STAND, YOU

11 WERE NEVER EMPLOYED ON A FULL-TIME BASIS DESIGNING

12 SOFTWARE FOR A SOFTWARE COMPANY?

13 A. THAT'S CORRECT.

14 Q. SO IT WOULD BE CORRECT TO SAY THAT FROM '79, OVER

15 THE PAST 25 YEARS, YOU WERE NEVER EMPLOYED ON A

16 FULL-TIME BASIS DESIGNING SOFTWARE FOR A SOFTWARE

17 COMPANY; CORRECT?

18 A. THAT'S CORRECT.

19 Q. AND YOU UNDERSTAND THAT WHEN WE TALK ABOUT PATENT

20 AND INFRINGEMENT OR ANTICIPATION OR WHATEVER, WE USE

21 THE WORDS AS THEY WOULD BE UNDERSTOOD BY ONE OF

22 ORDINARY SKILL IN THE ART AS OF THE TIME OF THE

23 INVENTION; CORRECT?

24 A. I UNDERSTAND THAT, YES.

25 Q. AND THE TIME OF THE EFFECTIVE DATE OF HEDLOY'S

1 PATENT IS SEPTEMBER OF '98, RIGHT?

2 A. THAT'S CORRECT.

3 Q. AND AS OF SEPTEMBER '98, OR FOR THAT MATTER,
4 FOREVER, YOU HAVE NEVER SAT AS AN ORDINARY SKILLED
5 PERSON IN A COMPANY, FULL TIME, DESIGNING SOFTWARE;
6 ISN'T THAT TRUE?

7 A. I'VE CONSIDERED MYSELF OF MORE THAN ORDINARY SKILL
8 IN THE ART.

9 Q. RIGHT. BUT THE TEST OF WHAT WORDS MEAN TO ONE
10 SKILLED IN THE ART IS NOT WHAT THEY MEAN TO YOU WITH A
11 PH.D. FROM U-MASS.; IT'S WHAT THEY MEAN TO THE WORKER
12 OF ORDINARY SKILL IN THE ART AS OF THE TIME OF THE
13 INVENTION; CORRECT?

14 A. THAT'S CORRECT.

15 Q. NOW --

16 THE COURT: WE'RE GOING TO HAVE TO STOP THERE,
17 MR. HAYES.

18 MR. HAYES: THANK YOU.

19 THE COURT: WE HAVE TO ADJOURN A LITTLE EARLY
20 THIS AFTERNOON, LADIES AND GENTLEMEN. WE'LL RESUME
21 TOMORROW MORNING AT 10 O'CLOCK.

22 (JURY EXCUSED)

23 THE COURT: YOU MAY STEP DOWN, DR. CROFT.

24 (WITNESS EXCUSED)

25 MR. HAYES: YOUR HONOR, I'VE ASKED

1 MR. SCHERKENBACH TO LET US HAVE ACCESS TO THE COPIES
2 AND COMPUTER THAT BLOCK, MILLER TESTIFIED TO SO THAT MY
3 GURU, CROSBY, CAN CHECK IT OUT TO SEE IF THERE IS ANY
4 MONKEY BUSINESS IN THERE AND THEY HAVE REFUSED TO GIVE
5 IT TO US. SO I DON'T THINK THAT'S FAIR.

6 MR. SCHERKENBACH: THEY HAVE EVERYTHING. THEY
7 HAVE ALL THE SOFTWARE. THEY HAVE EVERYTHING THEY NEED
8 TO RUN IT AND RECREATE IT EXACTLY AS WE DID. THEY HAVE
9 HAD IT FOR MONTHS AND MONTHS AND MONTHS. THEY ASKED US
10 LAST NIGHT WHILE OUR WITNESSES WERE STILL WORKING WITH
11 THE MATERIAL, SO OBVIOUSLY I WASN'T GOING TO GIVE THEM
12 OUR LAPTOPS. IF WHAT THEY WANT TO DO IS COME USE THEM
13 AT OUR PLACE SO WE CAN MAKE SURE THERE IS NO
14 DESTRUCTION DONE AND THINGS TAKEN OFF AND CHANGED, I
15 HAVE NO PROBLEM WITH THAT.

16 MR. HAYES: THANK YOU. THAT'S ACCEPTABLE.

17 THE COURT: ARE THERE ANY OTHER DISPUTES OR
18 ISSUES THAT NEED TO BE RESOLVED BEFORE WE BEGIN
19 TOMORROW?

20 MR. HAYES: NOTHING. I ASSUME THAT THE GOOSE
21 AND GANDER THEORY APPLIES, THAT THERE IS NO TALKING TO
22 THE WITNESS WHILE HE IS ON CROSS.

23 THE COURT: YES.

24 DR. CROFT, SINCE YOU ARE UNDER CROSS-EXAMINATION
25 RIGHT NOW, YOU SHOULD NOT TALK TO ANYONE ABOUT YOUR

1 TESTIMONY. YOU CAN TALK TO PEOPLE ABOUT ANYTHING ELSE,
2 BUT YOUR TESTIMONY.

3 MR. HAYES: AND FRANK, YOU'LL BRING THOSE
4 LAPTOPS --

5 MR. SCHERKENBACH: NO, YOU COME TO OUR PLACE.

6 MR. HAYES: NO, NO. TOMORROW WHEN KLAUSNER GETS
7 ON THE STAND, SO THAT IF WE ARE LUCKY ENOUGH TO FIND
8 ANYTHING, WE CAN SHOW THE JURY.

9 MR. SCHERKENBACH: WE'LL ABSOLUTELY HAVE THEM
10 AVAILABLE IN COURT, YES.

11 MR. HAYES: THANK YOU.

12 THANKS, JUDGE. DON'T YOU LOVE IT.

13 THE COURT: COURT WILL BE ADJOURNED UNTIL
14 TOMORROW MORNING.

15 (ADJOURNED 4:10 P.M.)

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I, ANGELA M. GALLOGLY, RPR, DO HEREBY

6

CERTIFY THAT THE FOREGOING PAGES ARE A TRUE AND

7

ACCURATE TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE

8

ABOVE-ENTITLED CASE.

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ANGELA M. GALLOGLY, RPR

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